EFFECTIVENESS OF FEDERAL AGENCIES' ENFORCEMENT OF LAWS AND POLICIES AGAINST COMPLIANCE, BY BANKS AND OTHER U.S. FIRMS, WITH THE ARAB BOYCOTT

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

JUNE 8 AND 9, 1976

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EFFECTIVENESS OF FEDERAL AGENCIES' ENFORCEMENT OF LAWS AND POLICIES AGAINST COMPLIANCE, BY BANKS AND OTHER U.S. FIRMS, WITH THE ARAB BOYCOTT

TUESDAY, JUNE 8, 1976

HOUSE OF REPRESENTATIVES,
COMMERCE, CONSUMER,
AND MONETARY AFFAIRS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2203, Rayburn House Office Building, Hon. Benjamin S. Rosenthal (chairman of the subcommittee) presiding.

Present: Representatives Benjamin S. Rosenthal, Robert F. Drinan, Edward Mezvinsky, Garry Brown, and John N. Erlenborn.

Also present: Full Committee Chairman Jack Brooks.

Staff present: Peter S. Barash, staff director; Robert H. Dugger, economist; Ronald A. Klempner, counsel; Eleanor M. Vanyo, assistant clerk; and Henry C. Ruempler, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRMAN ROSENTHAL

Mr. ROSENTHAL. The subcommittee will be in order.

The Commerce, Consumer, and Monetary Affairs Subcommittee begins hearings today into the Federal Government's regulatory response to the Arab blacklisting and boycott of American business. Our hearings will focus on two aspects:

First, we will seek to determine how effectively the Federal bank regulatory agencies, and particularly the Federal Reserve Board, are enforcing compliance with U.S. laws and policies bearing on the boycott issue.

Second, we will explore the law enforcement and disclosure policies, practices, and procedures of the Securities and Exchange Commission relating to registered firms receiving or complying with boycott requests.

At today's hearing, witnesses from the Commerce Department and two major money market banks will testify on the nature and extent of compliance by banks with Arab boycott requests. Since December 1, 1975, exporters and related service organizations, including banks, have been required to report their boycott activities to the Commerce Department. We have asked the Commerce Department to furnish us

today with the numbers of U.S. banks reporting boycott requests; the total dollar value of transactions concerning which boycott conditions were honored; the nature of those transactions; and the names of the countries where the requests originated.

While we will be receiving aggregated data, it should provide the subcommittee with a valuable picture of boycott activity within the financial community and assist Congress in its consideration of extending and amending the Export Administration Act of 1969. We expect the witnesses from the banks to discuss their policies and explain the dynamics of boycott-related financial transactions.

Tomorrow, the General Counsel of the Federal Reserve Board will testify on the legal tools available to Federal bank regulators for enforcing antiboycott statutes and policies. And he will, I am told, bring a statement with him from Chairman Burns on the moral significance of this matter.

Also tomorrow, Chairman Roderick Hills, of the Securities and Exchange Commission, will testify on his agency's enforcement activities and disclosure requirements as to registered companies involved in the boycott.

Our first witness this morning is Mr. Rauer Meyer, Director of the Office of Export Administration, Department of Commerce.

Mr. Meyer, we understand that you do not have a prepared statement, but that you are prepared to make a presentation as to the areas in which the subcommittee is interested.

STATEMENT OF RAUER MEYER, DIRECTOR, OFFICE OF EXPORT ADMINISTRATION, DEPARTMENT OF COMMERCE; ACCOMPANIED BY JOHN GARSON, ASSISTANT GENERAL COUNSEL, DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION

Mr. MEYER. That is correct, Mr. Chairman. Before I start, I would like to identify my colleague at the table, John Garson. He is Assistant General Counsel for the Domestic and International Business Administration in the Department.

We are currently in the final stages of compiling statistics on the reports submitted to the Department for the fourth quarter 1975 and the first quarter 1976. Banks have been required to report since December 1, 1975.

Mr. ROSENTHAL. Do you have any copies of that?

Mr. MEYER. I have, I believe, just one copy.

Mr. ROSENTHAL. We will share the one copy.

Mr. MEYER. Our preliminary figures indicate that for the period of December 1, 1975, through March 31, 1976, that 119 banks reported 5,190 transactions involving 10,443 requests to participate in restrictive trade practices. All of these requests were directed against Israel.

With respect to the countries originating the requests, we do not have the information for banks specifically. We do have overall figures, however, which deal with all types of firms.

Mr. ROSENTHAL. Give us all of the figures you have.

Mr. MEYER. These overall figures reveal that approximately 80 percent of all requests originated in four Arab States—Saudi Arabia, United Arab Emirates, Kuwait, and Iraq. The remaining 20 percent

came from, in diminishing order of magnitude, Iran, Libya, Qatar, Egypt, Jordan, Syria, and Lebanon. We have no reason to believe that this pattern is not roughly applicable to the requests received by banks.

The principal means by which banks become involved in the Arab boycott is by receiving a letter of credit from a bank in an Arab State which they then advise or confirm to the beneficiary, usually the exporter.

The letters of credit usually contain more than one restrictive trade practice request—which accounts for the fact that 10,443 requests were reported against 5,190 transactions.

The most common requirements, in order of volume, are certifications that: The carrier or airline is not blacklisted; the goods to be exported are not of Israeli origin nor contain material that is of Israeli origin; the supplier, vendor, manufacturer, or beneficiary is not blacklisted and the firm is not the parent subsidiary or sister company of a blacklisted firm; and the insurance company is not blacklisted.

With regard to compliance with the boycott requests, banks have reported that they have complied in 4,071 instances; have not complied in 288 instances; were undecided in 3 instances; and that the decision would be made elsewhere in 144 instances. Our preliminary statistics reveal that for the remaining 684 transactions, compliance was not indicated.

Of the 288 reports of noncompliance, 91 represent instances where the bank was not prohibited by our regulations from complying, but apparently decided, nonetheless, not to participate in the transaction. None of the remaining 197 represented requests which would clearly discriminate against U.S. citizens. They did, however, reflect refusal to advise or confirm letters of credit that in general requested certification that the goods, packaging, or invoice do not bear the Star of David or other similar symbols which we judged might have discriminatory effects.

The reports from banks indicated compliance in 324 instances involving such requests. Most of these, however, occurred prior to February 17, 1976, at which time the Department advised the business community that such requests were considered to have possible discriminatory effects. As a consequence, no compliance action will be taken against these firms.

Your opening statement, Mr. Chairman, indicated that we would provide some valuable information. I do not have that presently.

Mr. ROSENTHAL. While you are reviewing that, without objection, we will include in the record a statement by the President, dated November 20, 1975, which dealt with this issue. We will include all relevant documents in support thereof.

[The statement referred to follows:]

FOREIGN BOYCOTT PRACTICES

STATEMENT BY THE PRESIDENT ANNOUNCING A SERIES OF ADMINISTRATION ACTIONS AND LEGISLATIVE PROPOSALS TO PROVIDE A COMPREHENSIVE RESPONSE TO DISCRIMINATION AGAINST AMERICANS, NOVEMBER 20, 1975

I am today announcing a number of decisions that provide a comprehensive response to any discrimination against Americans on the basis of race, color, religion, national origin, or sex that might arise from foreign boycott practices.

The United States Government, under the Constitution and the law, is committed to the guarantee of the fundamental rights of every American. My Administration will preserve these rights and work toward the elimination of all forms of discrimination against individuals on the basis of their race, color, religion, national origin, or sex.

Earlier this year, I directed the appropriate departments and agencies to recommend firm, comprehensive, and balanced actions to protect American citizens from the discriminatory impact that might result from the boycott practices of other governments. There was wide consultation.

I have now communicated detailed instructions to the Cabinet for new measures by the United States Government to assure that our anti-discriminatory policies will be effectively and fully implemented.

These actions are being taken with due regard for our foreign policy interests, international trade and commerce, and the sovereign rights of other nations. I believe that the actions my Administration has taken today achieve the essential protection of the rights of our people and at the same time do not upset the equilibrium essential to the proper conduct of our national and international affairs.

I made the basic decision that the United States Government, in my Administration, as in the Administration of George Washington, will give "to bigotry no sanction." My Administration will not countenance the translation of any foreign prejudice into domestic discrimination against American citizens.

I have today signed a Directive to the Heads of All Departments and Agencies. It states:

(1) that the application of Executive Order 11478 and relevant statutes forbid any Federal agency, in making selections for overseas assignments, to take into account any exclusionary policies of a host country based upon race, color, religion, national origin, sex, or age. Individuals must be considered and selected solely on the basis of merit factors. They must not be excluded at any stage of the selection process because their race, color, religion, national, origin, sex, or age does not conform to any formal or informal requirements set by a foreign nation. No agency may specify, in its job description circulars, that the host country has an exclusionary entrance policy or that a visa is required;

(2) that Federal agencies are required to inform the State Department of visa rejections based on exclusionary policies; and

(3) that the State Department will take appropriate action through diplomatic channels to attempt to gain entry for the affected individuals.

I have instructed the Secretary of Labor to issue an amendment to his Department's March 10, 1975, Secretary's Memorandum on the obligation of Federal contractors and subcontractors to refrain from discrimination on the basis of race, color, religion, national origin, or sex when hiring for work to be performed in a foreign country or within the United States pursuant to a contract with a foreign government or company. This amendment will require Federal contractors and subcontractors, that have job applicants or present employees applying for overseas assignments, to inform the Department of State of any visa rejections based on the exclusionary policies of a host country. The Department of State will attempt, through diplomatic channels, to gain entry for those individuals.

My Administration will propose legislation to prohibit a business enterprise from using economic means to coerce any person or entity to discriminate against any U.S. person or entity on the basis of race, color, religion, national origin, or sex. This would apply to any attempts, for instance, by a foreign business enterprise, whether governmentally or privately owned, to condition its contracts upon the exclusion of persons of a particular religion from the contractor's management or upon the contractor's refusal to deal with American companies owned or managed by persons of a particular religion.

I am exercising my discretionary authority under the Export Administration Act to direct the Secretary of Commerce to issue amended regulations to:

(1) prohibit U.S. exporters and related service organizations from answering or complying in any way with boycott requests that would cause discrimination against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin; and

(2) require related service organizations that become involved in my boycott request to report such involvement directly to the Department of Commerce.

Related service organizations are defined to include banks, insurers, freight forwarders, and shipping companies that become involved in any way in a boycott request related to an export transaction from the U.S.

Responding to an allegation of religious and ethnic discrimination in the commercial banking community, the Comptroller of the Currency issued a strong Banking Bulletin to its member National Banks on February 24, 1975. The Bulletin was prompted by an allegation that a national bank might have been offered large deposits and loans by an agent of a foreign investor, one of the conditions for which was that no member of the Jewish faith sit on the bank's board of directors or control any significant amount of the bank's outstanding stock. The Bulletin makes it clear that the Comptroller will not tolerate any practices or policies that are based upon considerations of the race, or religious belief of any customer, stockholder, officer, or director of the bank and that any such practices or policies are "incompatible with the public service function of a banking institution in this country."

I am informing the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Federal Home Loan Bank Board that the Comptroller's Banking Bulletin reflects the policy of my Administration, and I encourage them to issue similar policy statements to the financial institutions within their jurisdictions, urging those institutions to recognize that compliance with discriminatory conditions directed against any of their customers, stockholders, employees, officers, or directors is incompatible with the public service function of American financial institutions.

I will support legislation to amend the Equal Credit Opportunity Act, which presently covers sex and marital status, to include prohibition against any creditor discriminating on the basis of race, color, religion, or national origin against any credit applicant in any aspect of a credit transaction.

I commend the U.S. investment banking community for resisting the pressure of certain foreign investment bankers to force the exclusion from financing syndicates of some investment banking on a discriminatory basis.

I commend the Securities and Exchange Commission and the National Association of Securities Dealers, Inc., for initiating a program to monitor practices in the securities industry within their jurisdiction to determine whether such discriminatory practices have occurred or will occur. I urge the SEC and NASD to take whatever action they deem necessary to ensure that discriminatory exclusion is not tolerated and that non-discriminatory participation is maintained.

In addition to the actions I am announcing with respect to possible discrimination against Americans on the basis of race, color, religion, national origin, or sex, I feel that it is necessary to address the question of possible antitrust violations involving certain actions of U.S. businesses in relation to foreign boycotts. The Department of Justice advises me that the refusal of an American firm to deal with another American firm in order to comply with a restrictive trade practice by a foreign country raises serious questions under the U.S. antitrust laws. The Department is engaged in a detailed investigation of possible violations.

The community of nations often proclaims universal principles of human justice and equality. These principles embody our own highest national aspirations. The antidiscriminations meansures I am announcing today are consistent with our efforts to promote peace and friendly, mutually beneficial realtions with all nations, a goal to which we remain absolutely dedicated.

Foreign Boycott Practices

The President's Memorandum to the Heads of Departments and Agencies, November 20, 1975

The purpose of this Memorandum is to underscore the applicability of Executive Order 11478, the Equal Employment Opportunity Act of 1972 (P.L. 92–261); the Age Discrimination in Employment Act of 1967 as amended by P.L. 92–269; and pursuant regulations to all Federal personnel actions, including those which involve overseas assignment of employees of Federal agencies to foreign countries which have adopted exclusionary policies based on a person's race, color, religion, national origin, sex or age.

In making selections for overseas assignment, the possible exclusionary policies of the country to which an applicant or employee is to be assigned must not be a

factor in any part of the selection process of a Federal agency. United States law must be observed and not the policy of the foreign nation. Individuals, therefore, must be considered and selected solely on the basis of merit factors without reference to race, color, religion, national origin, sex or age. Persons must not be "selected out" at any stage of the selection process because their race, color, religion, national origin, sex or age does not conform to any formal or informal requirements set by a foreign nation. No agency may list in its job description circulars that the host country has an exclusionary entrance policy or that a visa is required.

If a host country refuses, on the basis of exclusionary policies related to race, color, religion, national origin, sex or age, to grant a visa to an employee who has been selected by a Federal agency for an overseas assignment, the employing agency should advise the Department of State of this act. The Department will take appropriate action through diplomatic channels to attempt to gain entry for the individual.

The Civil Service Commission shall have the responsibility for insuring compliance with this Memorandum. In order to ensure that selections for overseas assignments are made in compliance with law, Executive Order, and merit system requirements, each agency having positions overseas must:

(1) review its process for selection of persons for overseas assignments to assure that it conforms in all repects with law, Executive Order, and merit system requirements; and

(2) within 60 days of the date of this Memorandum, issue appropriate internal policy guidance so that all selecting officials will understand clearly their legal obligations in this regard. The guidance must make clear that exclusionary policies of foreign countries based on race, color, religion, national origin, sex or age must not be considerations in the selection process for Federal positions. A copy of each agency's guidance in this regard should be sent to the Assistant Executive Director, U.S. Civil Service Commission, 1900 E Street, NW., Washington, D.C. 20415.

GERALD R. FORD.

Mr. MEYER. Mr. Chairman, I would prefer to develop the valuable information and supply it for the record, if I may.

[The information follows:]

The value of the 4,071 transactions reported to the Department as involving restrictive trade practices with which banks reported compliance during the period December 1, 1975, through March 31, 1976, totalled approximately $355 million. These figures are preliminary and therefore subject to change when the final report is prepared. Also, the figures, including the above-mentioned dollar values, do not reflect first quarter figures from those banks that elected to file a multiple report for the entire quarter. These reports were due by April 15, 1976. Very few, if any, had been received by March 31, 1976, the cut-off date for the figures presented to the Subcommittee. The number and value of the first quarter bank reports submitted after March 31 undoubtedly will be substantial. Those received after March 31 will be included in our second quarter tabulation.

Mr. ROSENTHAL. All right. The President, in his November 20, 1975, statement, issued certain directions to both the Department of Commerce and to the bank regulatory agencies, such as the Federal Reserve Board, Comptroller of the Currency, the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, et cetera.

Pursuant to the law and the President's statement, what is the responsibility of the Department of Commerce in this area?

Mr. MEYER. We do administer the Export Administration Act which, as you appreciate, has certain language regarding reporting requirements on boycott requests. The act sets forth the policy of the Government to discourage compliance with such requests. And in furtherance of the President's instructions, we did amend our regulations to require that service organizations and exporters were prohibited from complying with certain types of discriminatory requests.

And second, we amended the regulations to require that service organizations, including banks, report to us the requests they received. Previously, they were not obliged to do this.

Mr. ROSENTHAL. Are you satisfied that the banks have reported in accordance with both the law and the President's directive?

Mr. MEYER. I believe so. I have no reason now to believe that banks are not complying. I have no evidence in mind now that any bank or any significant number of banks are receiving requests which they are not reporting to us.

Mr. ROSENTHAL. In other words, they are complying with the reporting provision, but they are not complying with the thrust of the President's memorandum. Is that correct?

In other words, by the issuing letters of credit that contain boycott provisions, they are, in effect, violating the thrust of the Export Administration Act.

Mr. MEYER. I do not think they are violating our regulations because we have no evidence that they are complying with the types of requests which under the regulations they are clearly prohibited from complying with. The regulations state that as a matter of policy the Government is opposed to such boycotts. And the business community, banks, and exporters are encouraged not to comply. But they are not prohibited from complying with the nondiscriminatory type of request.

Mr. ROSENTHAL. Do the reports which the Department of Commerce has received from the banks indicate to you that they have handled letters of credit complying with the Arab boycott?

Mr. MEYER. Yes. As I indicated, in 4,071 instances the banks reported that they had complied with the requests.

Mr. ROSENTHAL. Is that, in any way, in violation of existing U.S. law?

Mr. MEYER. No, sir.

Mr. ROSENTHAL. Is it, in any way, in violation of the spirit of the President's statement of November 20, 1975?

Mr. MEYER. The President's statement, as I recall focused on the nature of the requests that would discriminate against U.S. citizens on the bases of race, religion, sex, and ethnic origin.

Mr. ROSENTHAL. Did you review any of the reports you received from the banks to see whether there was discrimination against U.S. citizens on the grounds that you have just enumerated?

Mr. MEYER. Yes.

Mr. ROSENTHAL. And were there any examples of that?

Mr. MEYER. No, sir.

Mr. ROSENTHAL. None whatsoever?

Mr. MEYER. I make the point here, sir, that there was no instance in which the request discriminated against U.S. citizens clearly in the sense that they dealt with clear racial or ethnic or religious grounds. There were other instances, which I have noted here, where there were references to the Star of David. And we have judged that requests involving such phrases may have discriminatory effects. So in that sense, there is a broader and more numerous set of requests. And banks have complied with some of those—but prior to the date on which the

Department indicated that we interpreted the regulations in such a fashion as to consider those phrases to have discriminatory effects.

Mr. ROSENTHAL. In any of the cases where you had any doubt as to whether or not they were in violation of either laws or regulations, did you refer them to the Department of Justice for disposition?

Mr. MEYER. Yes, sir.

Mr. ROSENTHAL. Can you tell us how many cases?

Mr. MEYER. Mr. Chairman, there were, I think, several hundred; but, I would rather pin the figures down for the record.

[The information referred to follows:]

By letter dated June 1, 1976, the Department forwarded to the Department of Justice copies of 928 reports pertaining to the receipt of restrictive trade practice requests relating to the Star of David or similar symbols. Of this total, 617 were submitted by banks.

Mr. ROSENTHAL. Did you say that there were several hundreds of cases?

Mr. MEYER. I did not mean to give the impression, if I did, that we were referring these to the Department of Justice for legal advice. As a matter of practice, we do refer discriminatory requests to the Department.

Mr. ROSENTHAL. For what reason do you refer them to the Department of Justice?

Mr. MEYER. For such action as they may wish to take.

Mr. ROSENTHAL. Including possible prosecution?

Mr. MEYER. Yes, sir.

Mr. ROSENTHAL. And have you made any referrals to the banking agencies from the information that you have?

Mr. MEYER. No, sir; we have not.

Mr. ROSENTHAL. Are you familiar with the directives and the communications that the Federal Reserve Board and the Comptroller of the Currency issued in this area?

Mr. MEYER. I am generally informed on the statement that the Chairman of the Federal Reserve Board made. I am not particularly informed with respect to the statements or the actions of the Comptroller of the Currency.

Mr. ROSENTHAL. The reporting provisions of both the law and the regulations state that these reports are made to the Department of Commerce and not to the Federal regulatory agencies. In other words, the reports of the banks are sent to your office rather than to the Comptroller of the Currency or to the Federal Reserve Board. Is that correct?

Mr. MEYER. That is correct.

Mr. ROSENTHAL. And in those cases where you referred matters to the Department of Justice for such action as they may take, you also notify the bank regulatory agencies about possible violations of either law or regulation.

Mr. MEYER. To date we have not.

Mr. ROSENTHAL. It would seem to me that they have a very keen interest in this area and that they would probably be concerned about violations of their mandate. But at any rate, you have not done so?

Mr. MEYER. No, sir.

Mr. ROSENTHAL. On January 13, 1976, your office announced a $1,000 fine against Getty Oil Co. for the failure to report to the Commerce

Department an Arab request to boycott Israel. Have there been other fines in this area, or are there other fines in the process of being imposed for the failure to report boycott requests to Commerce?

Mr. MEYER. May I provide that for the record?

Mr. ROSENTHAL. You do not know?

Mr. MEYER. I believe there have been six instances altogether to date. I do not now have clearly in mind the number of cases we have in the works.

[The information referred to follows:]

Fines of $1,000 each have been imposed on the following firms: AGIP USA, Inc., New York, N.Y.; Inter-Equipment Company, New York, N.Y.; Continental-Emsco Company, Houston, Texas; National Cash Register Company, New York, N.Y.; Getty Oil Company, Los Angeles, California; and International Engineering Company, Inc. All but the latter have paid the fine. International Engineering Company is appealing imposition of the fine. The Office of Export Administration currently has identified 52 other firms that apparently failed to report boycott requests. Steps are underway to establish whether they should be charged with a violation of our regulations.

Mr. ROSENTHAL. What is the budget of the Office of Export Administration?

Mr. MEYER. It is approximately $5 million.

Mr. ROSENTHAL. How many persons are responsible for compiling boycott data and enforcing compliance with reporting requirements?

Mr. MEYER. With respect to the processing of the reports, we are presently devoting about 5 man-years to that.

Mr. ROSENTHAL. Does that mean five people?

Mr. MEYER. It will mean the equivalent of five people over the course of the year; yes, sir.

Mr. ROSENTHAL. But it could mean fewer than five people, couldn't it?

Mr. MEYER. It will be more than five people, but they will not necessarily be working full time.

Now with respect to the compliance itself, at the present time I would estimate the resources applied to that aspect of it as 2½ man-years.

Mr. ROSENTHAL. Yours is the only agency that views a full vista of violations because yours is the only agency that gets reports from all of the institutions that are involved in this area. Isn't that correct?

Mr. MEYER. That is correct.

Mr. ROSENTHAL. And you are devoting 2½ man-years to reviewing this area.

Mr. MEYER. In terms of compliance, that is correct at the present time. We have other resources which can be brought into play. We are presently engaged in adding to the resources.

[Additional response to above questions follows:]

U.S. DEPARTMENT OF COMMERCE,
DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION,
Washington, D.C., July 7, 1976.

HON. BENJAMIN S. ROSENTHAL,
Chairman, Subcommittee on Commerce, Consumer and Monetary Affairs, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In my testimony on June 8, 1976, before the Subcommittee on Commerce, Consumer and Monetary Affairs of the Committee on Government Operations, I responded to a question from you concerning the

number of persons responsible for compiling boycott data by indicating that we are presently devoting about five man-years to this task (Page 13 of the transcript of the Hearings). I also indicated that we were applying approximately 2½ man-years to the compliance aspect of the program (Page 14 of the transcript).

In responding, I had in mind the resources we devote from our permanent headcount and I overlooked the temporary help that we have obtained to cope both with the greatly increased number of reports we now are receiving and with the compliance program. In so doing, I inadvertently understated the man years devoted to the boycott effort. In more accurate terms, the Office of Export Administration currently is allocating approximately four man-years of its permanent staff to the administrative tasks directly related to the processing and compilation of boycott report data and three and a half man-years of its permanent staff to the compliance aspect. In addition, the Office has augmented its permanent staff with three temporary professionals for report review and data tabulation tasks; with seven temporary clerks for support functions, and with one temporary clerk in the compliance area.

To the extent you consider it appropriate, the record might usefully be revised to reflect the correct figures.

Sincerely,

RAUER H. MEYER,
Director.

Mr. ROSENTHAL. Mr. Erlenborn.

Mr. ERLENBORN. I have no questions.

Mr. ROSENTHAL. Congressman Drinan.

Mr. DRINAN. Thank you, Mr. Chairman. And thank you, Mr. Meyer.

Would you feel that without any new legislation the pattern which you have outlined of compliance with the boycott will continue? In other words, are you saying in effect that new legislation is needed?

Mr. MEYER. I think the pattern would change in this respect. I noted that there were a number of boycott requests involving the Star of David type of phraseology. I think that is likely to recede, if not disappear.

Mr. DRINAN. But that is not really responsive to my question. Here we have the vast majority of banks complying. As I add it up, 5,186 transactions were reported, and 4,100 have in fact complied. Information is not available on others. So in fact they are complying and are submitting to the boycott. Will this change without legislation?

Mr. MEYER. I would anticipate that the present pattern, with the minor exception that I noted, would continue.

Mr. DRINAN. What will happen if they submit after February 17, 1976, at which time the Department advised the business community that such requests were considered to have possible discriminatory effects? What will you do about such acts after February 17, 1976?

Mr. MEYER. If there is evidence that there has been a violation of regulations, we shall pursue it.

Mr. DRINAN. Do you think the regulations are sufficient, without legislation, to prevent banks from engaging in the boycott?

Mr. MEYER. If you are referring to engaging in the discriminatory type of request which is prohibited under the regulations, I think the regulations we have and the underlying statute are adequate.

Mr. DRINAN. Is the Department of Commerce advocating legislation or not? Do you want legislation to carry out the purposes of the Export Administration Act?

I have documents here from Rogers Morton and from Arthur Burns saying that their agencies are all in favor of the Export Administration Act. Arthur Burns says pretty categorically that it is not tech-

nically illegal for a bank to participate, but he feels that it is improper for banks to participate. But he says quite categorically in a letter to Chairman Rosenthal, on June 3, 1976, that legislation is needed. But he also goes on to say that perhaps this could be solved through diplomatic or other international channels.

Do you, and does the Commerce Department, say that we need legislation?

Mr. MEYER. Mr. Congressman, with all due deference, I am not in a position this morning to speak for the Department.

Mr. DRINAN. You are revealing for the first time this horrendous pattern, and you are in charge of this division. Are you going to recommend that the Commerce Department request legislation? You have said already that legislation is necessary. And I assume, therefore, that you are going to go to your superiors and say, "I cannot do this job with the updated regulations of February 17, and we need legislation."

Mr. MEYER. I did not mean to convey that.

Mr. DRINAN. Why not?

Mr. MEYER. I said that we had present authority in the statute to enforce our prohibition against compliance with discriminatory requests.

Mr. DRINAN. And if you do not do anything, what is going to happen? These banks are actually participating in the economic boycott of Israel. They are helping and aiding and abetting the Arab nations in their economic warfare against Israel. That is precisely what is happening. Right? And you do not care about that?

The Export Administration Act is designed to prevent that. And yet it is ineffective. Why do we not need legislation? Why do you not recommend legislation this afternoon?

Mr. MEYER. Mr. Drinan, the Secretary is testifying on Friday before the House International Relations Committee on the extension of the act. I expect him to deal with this subject of the boycott in fairly great detail. And I respectfully suggest that he is a much better spokesman for the Department than I.

Mr. DRINAN. I don't agree with that. You have infinitely more experience in this than does he. You have had this position, I assume, for a number of years, and you have access to all of this data. And you are the one who is telling us that most American banks are, as are many American corporations, in effect doing something injurious to our ally, Israel. And you are telling me that you are not going to take any position on recommending legislation that, as I understand your testimony and the questioning here, you concede is absolutely essential.

I do not understand. If you want to carry out the objectives of the act, it would seem that you would say that the act is insufficient, and while it imposes a moral obligation on banks and corporations, it does not reach the letter of credit situation.

Mr. MEYER. Mr. Congressman, the act discourages compliance with the boycott requests and with the boycott in general. The regulations of the Department, as a matter of policy, discourage that. They go further and prohibit compliance with certain types of requests.

We have ample authority to implement those provisions of the regulations that prohibit discriminatory compliance.

Mr. DRINAN. Have you ever suspended the export privileges of a company? The answer is "No." Why not?

Mr. MEYER. To date, we have limited our sanctions to monetary penalties.

Mr. DRINAN. That is right. And they keep on submitting to the Arab economic boycott. That fine is a trifling $1,000. What is that to a corporation?

Have you ever imposed any fiscal penalties on a bank? Or would you do that? Do you have the power to do that?

Mr. MEYER. Oh, yes.

Mr. DRINAN. And after February 17, it is conceivable that you might do that. Is that right?

Mr. MEYER. If we find that a bank has violated the regulations, yes, we have the authority to proceed.

Mr. DRINAN. You also have the authority to suspend the privilege, do you not, of an exporter or of a bank?

Mr. MEYER. That is correct.

Mr. DRINAN. When are you going to use that? How bad does a bank have to be before you say, "I am going to enforce the law?"

The law was put there by Congress. The law is not perfect and does not reach everything, but it does in fact give you the privilege of lifting the license. When are you going to move in on these banks?

Mr. MEYER. When there is a circumstance that in our judgment requires the heaviest penalty that we are authorized to impose under the act.

Mr. DRINAN. What are they going to do for that? They are all submitting. You have said that 4,071 have complied. Do you mean to say that this is a trifling thing and that the penalty is not deserved?

Mr. MEYER. We do not yet have any case, Mr. Drinan, where we have concluded that a bank has violated our regulations.

Mr. DRINAN. What about these situations that you referred to Justice? When do you refer them to Justice?

Mr. MEYER. Those were requests. A large number of them, as far as banks were concerned, were received prior to the date of February 17.

Mr. DRINAN. But you have not referred anybody to Justice since February 17, have you?

Mr. MEYER. We receive reports from banks, which they are obligated to submit. When those reports involve what we consider to be discriminatory requests, we as a matter of practice refer those to the Justice Department for such action as they may care to take under the Civil Rights Act.

And if there is a violation of our regulations—if the reports indicate compliance with the discriminatory requests—we then move into action in terms of our compliance.

Mr. DRINAN. When did you last move into action? What do you mean by "move into action?"

Mr. MEYER. The kind of action that has in the past, in five or six instances, led to the imposition of a civil penalty.

Mr. DRINAN. But is it fair to say that the penalty is being adequately levied? You have said that the fine has been levied in five or six instances. But you have 4,100 banks and major corporations which

have been revealed through other data and information that has come to us.

That fine of $1,000 is a tiny penalty. Do you think that the Commerce Department is vigorously carrying out the act that it was given by Congress to enforce?

Mr. MEYER. I do not think it necessarily follows that because we do not impose in the case of a first offense the heaviest penalty that we can under the law that we are not vigorously enforcing it.

Mr. DRINAN. But you are not discouraging companies from complying with the boycott. The total volume of petrodollars coming in from these nations that you have mentioned is going up and up and up. And the total volume of letters of credit is going up and up and up. So you are not discouraging them as the act says that they should be discouraged. That is not effective enforcement. Is that a fair inference?

Mr. MEYER. I do not think it is fair to talk in terms of effective enforcement or compliance by relating out and out violations of the regulations with actions on the part of the banks or the business community which they are not prohibited from taking.

In terms of being successful in encouraging the business community not to participate, this is not tantamount to saying, in my judgment, that we are failing to take appropriate compliance action.

Mr. DRINAN. Do you give gold medals to those that follow the act? In 91 instances a bank was not prohibited by your regulations from complying, but they apparently decided, nonetheless, not to participate in the transaction. I assume that they had some moral feeling about this matter.

How can you make that number 91 grow? That, I take it, is your job.

Mr. MEYER. We have circularized the business community; we have circularized the banks. We have called to their attention the antipathy of the Government toward the boycott. We have encouraged them not to participate in the boycott. There has been, I think, ample publicity of the President's remarks. And we have acted, where we felt we had the evidence, to move against firms and impose penalties where they have violated what was prohibited by the regulations.

Mr. DRINAN. Mr. Meyer, let us go back to square one now. You say you do not know whether you want legislation or whether you will recommend legislation. As I read the act, the Commerce Department could make regulations that will make compliance with the boycott illegal. You have that inherent power.

Right now, as you know better than I, the only thing which is currently illegal under the Export Administration Act and the Commerce Department regulations is failure to report a boycott transaction. Compliance is not illegal.

But the Commerce Department does have the power to amend the regulations to prohibit compliance and to make it illegal. I and others have a bill in to do that very thing. But, frankly, we have been hoping and waiting for the Commerce Department to do what the clear intent of the Export Administration Act says—that we want to discourage this and, if necessary, to make it illegal.

Do you think that the Commerce Department is going to move and make not merely the failure to report illegal, but make the compliance with the boycott illegal.

Mr. MEYER. Mr. Drinan, I do not want to appear uncooperative. But with the Secretary appearing on Friday before the House International Relations Committee and, since he will be dealing with the subject, I would prefer not to deal with this. This is essentially a broad policy question.

Mr. DRINAN. It is not really, sir. It is statutory construction. We will pass a law if you want, but I think that you have the power.

Mr. ERLENBORN. Will the gentleman yield?

Mr. DRINAN. Yes; I would be happy to yield.

Mr. ERLENBORN. I think the gentleman from Massachusetts is making the assumption that the law clearly prohibits compliance with the boycott on the part of the banks.

I have here a letter to the chairman of our subcommittee from Arthur Burns, the Chairman of the Board of Governors of the Federal Reserve System.

Mr. DRINAN. Would the gentleman yield?

Mr. ERLENBORN. Yes.

Mr. DRINAN. I do not make that assumption. I am asking him whether they have the power by regulation to make compliance by the banks illegal. And that is open to question. But, no; I am not saying what the gentleman is imputing.

Mr. ERLENBORN. Mr. Burns addresses the question as to whether they have that authority. He says,

> The Board of Governors has expressed the view, based upon its understanding of the act, that it is improper for banks to participate in such activities, but as we view the law at present, they are not prohibited from doing so.

So apparently Mr. Burns' interpretation of the law is that the Export Administration Act does not prohibit compliance with the boycott.

The same conclusion was apparently reached by the Senate Committee on Banking, Housing, and Urban Affairs.

That committee, in a report dated May 25, 1976, makes this comment:

> It is noted the Committee was urged by some to ban any and all forms of compliance with the boycott. It concluded, however, that such a ban would be unfair to many U.S. firms, would be of little benefit to the United States, and would deprive the President of desirable flexibility in the conduct of U.S. foreign policy.

So I think the Senate committee has also drawn the conclusion that the Export Administration Act does not prohibit these activities. And it has come to the further conclusion that it would not be desirable at this time to amend the act to make it clearly illegal to comply with the boycott.

Mr. DRINAN. Would the gentleman yield?

Mr. ERLENBORN. I would be happy to.

Mr. DRINAN. I think that a different interpretation was stated by Rogers Morton in a letter of Mr. Morton, the then Secretary of Commerce, on December 4, 1975, to Chairman Rosenthal. This question was asked of him:

> Would new legislation be necessary to prohibit American companies from complying with boycott-related demands, or is existing legislation adequate for that purpose?

The answer by Mr. Morton, the Secretary of Commerce, was:

> New legislation would not be necessary to prohibit American companies from complying with boycott-related demands. Such compliance could be prohibited by regulations pursuant to the following portion of Section 4(b)(1) of the Act: "The rules and regulations shall implement the provisions of section 3(5) of this Act and shall require that all domestic concerns receiving requests for the furnishing of information or the signing of agreements as specified in that section must report this back to the Secretary of Commerce for such action as he may deem appropriate to carry out the purposes of that section."

So I would again ask, Mr. Meyer, do you agree with the former Secretary of Commerce that you do not need legislation and that you have the power under the act to do precisely what I just said?

Mr. MEYER. I do not disagree with the former Secretary of Commerce. But I do not want to anticipate the present Secretary of Commerce. I think there are a number of reasons, Mr. Drinan, why the judgment has been made to date, as a matter of broad national interest policy, that we should pursue the course we are pursuing.

Mr. DRINAN. And that course has been to go along and not make regulations that carry out the basic purpose of the Export Administration Act.

You cannot have it both ways, sir. You cannot say, "We don't need legislation, but we are not implementing the legislation that Congress gave us 10 years ago." You just cannot go on in that totally unsatisfactory situation. You have to have it one way or the other. We will pass a law and force you people to do what you already have the power to do. But I think that is a very unseemly position for the administration to be in.

Despite all of the rhetoric of President Ford, which the chairman quoted, and despite Rogers Morton's statement of months ago, you are not proceeding. And now we have the revelation that the banks are aiding and abetting and that they are partners in this—I was going to say "crime"—basically unacceptable public policy which the Congress intended to forbid some 11 years ago.

Would you have any comment on that?

Mr. MEYER. I don't think so.

Mr. DRINAN. Mr. Chairman, I am sure that my 5 minutes ran out long ago.

Mr. ROSENTHAL. I think it has, but you are doing a good job.

Mr. DRINAN. If I may ask unanimous consent, I have one last question.

Mr. ROSENTHAL. Without objection.

Mr. DRINAN. Mr. Meyer, there is another area under your jurisdiction which this subcommittee investigated some time ago. That is about the promotion activities that you conduct to get more business for American corporations with Saudi Arabia and other boycotting countries. It is my understanding that some of the aggressiveness of that program has been diminished and that you do not have trade shows, perhaps at the Mayflower Hotel, anymore where you invite all types of people to participate in the trade fairs with these boycotting countries. But to what extent does the Commerce Department still push the business offices of these boycotting countries to American corporations?

Mr. MEYER. May I undertake to supply that for the record?

Mr. DRINAN. You have told us that you devote 5 man-years to compliance with the boycott—whatever "man-years" may mean. How many man-years do you devote to the promotion of trade with the boycotters? That is not a bad question, is it?

Mr. MEYER. I can give you the answer I gave you in the first case because that is within my sphere of responsibility. The promotional aspect is not my responsibility. I do not have the figures. I will be glad to take the question back and supply something for the record.

Mr. DRINAN. Mr. Meyer, you are the Director of the Office of Export Administration. So I assume that you know everything that is going on with respect to these boycotting nations. It is under your jurisdiction, I take it.

Mr. MEYER. Not the promotional aspect; no, sir.

Mr. DRINAN. Do you mean then that they are doing something which it is your function to deter?

They are promoting the boycott. They are saying, irrespective of the fact that these companies are doing something basically in violation of the Export Administration Act, "We want more of these petrodollars."

Mr. MEYER. The Department does have an export promotional responsibility. But that is lodged elsewhere in the Department. I am responsible for the export control program.

But I think that it is an exaggeration or a misinterpretation to say that the Department is obligated to discourage all trade with the Middle East countries.

Mr. DRINAN. No one is saying that at all.

Mr. MEYER. So there is, I think, continued room for the Department's promotional activities.

Mr. DRINAN. Mr. Meyer, was it your office that some weeks or months ago said, "We are going to continue to send out these offers of business with the Arab nations, but we are going to put a little stamp on them saying, 'We do not mean to bless the boycott that is implicit in this offer.'"

Mr. MEYER. No, sir; it was not my office. Furthermore, that particular practice has been discontinued, I believe.

Mr. DRINAN. Oh, they do not stamp them?

Mr. MEYER. The Department is not sending out trade opportunity information obtained from documents known to contain a boycott request. The Department does disseminate trade opportunities which do not contain boycott requests. Such documents are stamped with a statement of the Government's policy on boycotts.

Mr. DRINAN. So a few man-years have been saved that way. But we still do not know how many man-years—maybe that should be person-years. "Man-years" sounds quite sexist. But we still do not know how many person-years we devote to helping Saudi Arabia along.

At any rate, please supply that for the record.

Thank you, Mr. Chairman.

[The information referred to follows:]

The Department has a Commerce Action Group for the Near East (CAGNE) that provides the American business community with information on and assistance in exporting products to Iran, Israel, the Arab States, and North Africa. CAGNE currently has 34 people on board. Of these, approximately 21 man-years are devoted to the promotion of U.S. exports to Iran, Israel, and North Africa,

including personnel at a Trade Center in Iran, while 13 man-years are devoted to expanding our trade with the Arab States.

Mr. ROSENTHAL. At this point, I want to read into the record some portions of the letter of the Comptroller of the Currency, dated February 24, 1975. He says: "Discrimination based on religious affiliation or racial heritage is incompatible with the public service function of banking institutions in this country."

That letter of February 24 will be included in the record by unanimous consent.

[The letter referred to follows:]

THE ADMINISTRATOR OF NATIONAL BANKS,
Washington, D.C., February 24, 1975.

To: Presidents of all national banks.
Subject: Discriminatory practices.

This Office has recently learned that some national banks may have been offered large deposits and loans by agents of foreign investors, one of the conditions for which is that no member of the Jewish faith sit on the bank's board of directors or control any significant amount of the bank's outstanding stock. While we are not presently aware of any such deposits or loans, so conditioned, having been accepted by any of the banks under the jurisdiction of this Office we are concerned that all national banks scrupulously avoid any practices or policies that are based upon considerations of the race, or religious belief of any customer, stockholder, officer or director of the bank.

One of the major responsibilities of this Office is to insure that each national bank meets the needs of the community it was chartered to serve. While observing those credit and risk factors inherent to the banking business, all the activities of all national banks, indeed of all banks regardless of the origin of their charters, must be performed with this overriding principle of service to the public in mind. Discrimination based on religous affiliation or racial heritage is incompatible with the public service function of a banking institution in this country.

By means of its regular examination function this Office will assure the adherence of national banks to a nondiscriminatory policy in the circumstances mentioned, as well as in any other respect where racial or religious background might similarly be placed in issue. This Office is confident that it has the full understanding and cooperation in this effort of the banks in the national system.

Very truly yours,

JAMES E. SMITH,
Comptroller of the Currency.

Mr. ROSENTHAL. That letter was a followup to the letter of December 12, 1975, of Chairman Burns of the Federal Reserve Board. He began as follows:

On November 20, 1975, the President announced a number of actions intended to provide a comprehensive response on the part of the Federal Government to any discrimination against American citizens or firms that might arise from foreign boycott practices.

Two elements of the President's announcement relate to the possible involvemen of commercial banks in such practices. First, the President has directed the Secretary of Commerce to amend regulations, under the Export Administration Act to prohibit U.S. exporters and related service organizations from answering or complying in any way with boycott requests that would cause discrimination against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin.

The term "related service organizations" is defined to include banks. Accordingly banks that became involved in a boycott request related to an export transaction from the United States will be required to report any such involvement directly to the Department of Commerce.

Second, the President has encouraged the Board of Governors and the other Federal financial regulatory agencies to issue statements to financial institutions within their respective jurisdictions emphasizing that discriminatory banking practices or policies based upon race or religious belief of any customer, stock-

holder, employee, officer, or director are incompatible with the public service function of banking institutions in this country.

The Board of Governors strongly supports the President's statement in this regard. Banking is clearly a business affected with a public interest. Banking institutions operate under public franchises. They enjoy a measure of governmental protection from competition. And they are the recipients of important Government benefits.

The participation of a U.S. bank, even possibly, in efforts by foreign nationals to effect boycotts against other foreign countries friendly to the United States, particularly where such boycott efforts may cause discrimination against U.S. citizens or businesses, is, in the Board's view, a misuse of the privileges and benefits conferred upon banking institutions.

He goes on as follows:

One specific abuse that has been called to the attention of the Board of Governors is the practice of certain U.S. banks of participating in the issuance of letters of credit containing provisions intended to further a boycott against a foreign country friendly to the United States. The practice appears to have arisen in commercial transactions between U.S. exporters and foreign importers in which the importer has arranged for the issuance of a bank letter of credit as a means of making payment to the exporter for the goods he has shipped.

In some cases, the importer has required as one of the conditions that must be satisfied before payment can be made by the U.S. bank to the exporter that the exporter provide a certificate attesting that it is not in any way connected with a country or firm being boycotted by the importer's home country or is otherwise in compliance with the terms of such a boycott.

Such provisions go well beyond the normal commercial conditions of letters of credit and cannot be justified as a means of protecting exported goods from seizure by a belligerent country. Moreover, by creating a discriminatory impact upon U.S. citizens or firms who are not themselves the object of the boycott, such provisions may be highly objectionable as a secondary boycott.

While such discriminatory conditions originate with and are imposed at the direction of the foreign importer who arranges for the letter of credit, the U.S. banks that agree to honor such conditions may be viewed as giving effect to and thereby becoming participants in the boycott.

The Board believes that even this limited participation by U.S. banks in a boycott contravenes the policy of the United States, as announced by the President, and as set forth by Congress in the following declaration of the Export Administration Act of 1969.

There follows a citation and then the act.

Would you tell us again the number of instances that U.S. banks, and the number of banks, have complied with the secondary boycott, as defined by Chairman Burns?

Mr. MEYER. May I please deal with that for the record?

Mr. ROSENTHAL. It is in your own statement.

Mr. MEYER. No; you are using the term "secondary boycott."

Mr. ROSENTHAL. Mr. Burns describes the letter of credit, in many ways, as a secondary boycott. In how many cases have there been issuances of letters of credit that have presumably violated the policy tenets set down by the President and by the Federal Reserve Board?

Mr. MEYER. As I indicated earlier, banks have reported they have complied in 4,071 instances.

Mr. ROSENTHAL. How many banks have complied?

Mr. MEYER. I believe 119 banks reported. I cannot relate more precisely the number of banks related to that 4,071.

Mr. ROSENTHAL. And you are the only governmental agency that is a repository of that information. Is that correct?

Mr. MEYER. That is correct.

Mr. ROSENTHAL. And simply stated in one or two sentences, what have you done about it?

Mr. MEYER. As I indicated earlier, we have advised the banks of the Government's policy. We have notified them of the regulations encouraging them not to comply. We have drawn to their attention the fact that they are prohibited from complying in certain instances.

Mr. ROSENTHAL. Have all of these efforts in which you have engaged had any effect at all?

Mr. MEYER. I would observe that they have not complied in 280 instances. I would not want to claim full credit for that; I do not know what the circumstances were.

Mr. ROSENTHAL. Is it your view that the banks did not know about the law or had not received the Comptroller's memorandum or the Federal Reserve Board's letters? Do you think that your telling them this information was a revelation to them?

Mr. MEYER. We took pains to inform the banks as well as we could of our regulations of the Goverment's policy. There may very well be instances of individual banks that may be unaware of this.

Mr. ROSENTHAL. Do you think so?

Mr. MEYER. Possibly.

Mr. ROSENTHAL. Did not every bank in the country receive either a copy of Smith's letter or Burns' letter or the letter from Chairman Wille of the FDIC?

Mr. MEYER. I do not of my own knowledge know this, Mr. Chairman.

Mr. ROSENTHAL. Let me read into the record a printed memorandum from the office of Robert E. Barnett, Chairman of the Federal Deposit Insurance Corporation, dated May 26, 1976. It says as follows:

To: Chief executive officer of insured nonmember banks. Subject: Discriminatory practices.

On November 20, 1975, President Gerald R. Ford announced a number of actions that provide a comprehensive response to any discrimination against Americans or American enterprises on the basis of race, color, religion, national origin, or sex that might arise in foreign boycott practices. A significant portion of President Ford's announcement was directed to the banking industry and to the Federal bank regulatory agencies responsible for supervision of the Nation's financial institutions.

In furtherance of the goals delineated in President Ford's statement, the Federal Deposit Insurance Corporation would like to bring to your attention the following specific statements affecting the banking industry * * *.

There are then listed a number of items which I shall not burden you with, but which will be included in the record.

And then the last paragraph says:

The Federal Deposit Insurance Corporation wants to emphasize that compliance by financial institutions within its jurisdiction with discriminatory conditions directed against any of their customers, stockholders, employees, officers, directors, or any other person or entites associated with such financial institutions is incompatible with the public service function of American banks. By means of its regular examination function, the Federal Deposit Insurance Corporation will insure adherence by State nonmember banks and mutual savings institutions to a nondiscriminatory policy.

[The memorandum referred to follows:]

FEDERAL DEPOSIT INSURANCE CORPORATION,
OFFICE OF THE CHAIRMAN.
Washington, D.C., May 26, 1976.

To: Chief executive officers of insured State nonmember banks.

Subject: Discriminatory practices.

On November 20, 1975, President Gerald R. Ford announced a number of actions that provide a comprehensive response to any discrimination against American or

American business enterprises on the bases of race, color, religion, national origin or sex that might arise from foreign boycott practices. A significant portion of President Ford's announcement was directed to the banking industry and to the Federal bank regulatory agencies responsible for the supervision of the nation's financial institutions. In furtherance of the goals delineated in President Ford's statement, the Federal Deposit Insurance Corporation would like to bring to your attention the following specific statements affecting the banking industry:

(1) The President has stated that it is the policy of his administration not to tolerate financial institution practices or policies based upon the race or religious belief of any customer, stockholder, employee, officer or director of a bank.

(2) Exercising his discretionary authority under the Export Administration Act, the President has directed the Secretary of Commerce to amend his agency's regulations to prohibit U.S. exporters and "related service organizations" (defined to include banks) from answering or complying in any way with boycott requests that would cause discrimination against U.S. citizens or firms on the basis of race, color, religion, sex or national origin. The President also directed that the regulations be amended to require related service organizations that become involved in any boycott request to report such involvement to the Department of Commerce.

(3) On March 23, 1976, the President signed into law legislation to amend the Equal Credit Opportunity Act, which presently covers discrimination based on sex and marital status, to include a prohibition on any creditor discriminating on the basis of race, color, religion or national origin against any credit applicant in any aspect of a credit transaction. President Ford's November statement had urged the enactment of such legislation.

The Federal Deposit Insurance Corporation wants to emphasize that compliance by financial institutions within its jurisdiction with discriminatory conditions directed against any of their customers, stockholders, employees, officers, directors or any other persons or entities associated with such financial institutions is incompatible with the public service function of American banks. By means of its regular examination function, the Federal Deposit Insurance Corporation will assure adherence by State nonmember banks and mutual savings institutions to a nondiscriminatory policy.

ROBERT E. BARNETT, *Chairman.*

Mr. ROSENTHAL. Were you aware that the FDIC had sent out a letter to all of their banks and that the Comptroller of the Currency had sent out a memorandum to all of his banks and that the Federal Reserve Board had sent out a letter to all of its banks?

It is not your testimony that you had to remind the banks of President Ford's policy position, is it?

Mr. MEYER. Mr. Chairman, as the agency that administers the statute and administers the regulations, we have an obligation to inform parties who are affected by our regulations. We must inform them of what they are, how they impact upon them, and what companies or banks may and may not do under the regulations.

Mr. ROSENTHAL. I appreciate all of that.

Mr. MEYER. So we did take steps, in our own small way, to inform them.

Mr. ROSENTHAL. How would you describe what you have done—hand holding, wrist slapping, or whispering in the ear? How would you describe it? I know how I would describe it. It has had no effect whatsoever.

Mr. MEYER. The focus, as I recall from your reading of the letter just a minute ago, of the FDIC's admonition was that the banks should not comply with discriminatory requests. Our regulations set that forward. The banks were notified to that effect. And we have, to the best of my knowledge, no instance in which any bank has complied with a prohibited boycott request.

Mr. ROSENTHAL. Do the discriminatory letters of credit violate the thrust of the Burns' letter?

Mr. MEYER. Yes—if they were complied with. But we have no evidence that any bank has complied with the prohibited type of discrimination.

Mr. ROSENTHAL. Were the only ones that were in violation the ones that were referred to the Justice Department?

Mr. MEYER. Those were not in violation.

Mr. ROSENTHAL. Why were they referred to the Justice Department?

Mr. MEYER. The Justice Department has the responsibility under the Civil Rights Act.

Mr. ROSENTHAL. And you did not think those were violations?

Mr. MEYER. Mr. Chairman, what was reported to us and what was referred to the Justice Department were the reports made to us by firms.

Mr. ROSENTHAL. Mr. Erlenborn.

Mr. ERLENBORN. Thank you, Mr. Chairman.

I think that in a good deal of the questioning, Mr. Meyer, there has been a confusion between two types of compliance with boycott or two types of discrimination. One is a compliance that involves discrimination against U.S. citizens or firms, based upon race, color, religion, sex, or national origin. Those types of action are clearly prohibited and do violate the law.

The other is a compliance with the boycott against the State of Israel. And I submit that that is not clearly prohibited by law.

I found it interesting that the chairman, in reading rather extensively from the letter from the Federal Reserve, did not read the quotation of the law which is the declared policy of the United States, as adopted by this Congress, in the Export Administration Act of 1969.

Here is the clear directive from this Congress:

"It is the policy of the United States to encourage and request domestic concerns engaged in the export of articles, materials, supplies, or information, to refuse to take any action, including the furnishing of information or the signing of agreements * * *"

Mr. ROSENTHAL. It says it is the policy of the United States to oppose restrictive trade practices.

Mr. ERLENBORN. I have left out subparagraph (A).

Mr. ROSENTHAL. You are not reading it correctly.

Mr. ERLENBORN. Here is the clear mandate from the Congress as to what domestic firms must do. We must encourage and request domestic concerns engaged in the export of articles, materials, et cetera, not to engage in the boycott. So I think that if the Congress has declared that to be our policy, then you should follow that policy.

We should, I think, take up the question. The gentleman from Massachusetts has suggested that he has introduced legislation that would change this declaration and make a mandate to prohibit compliance with boycotts. I think we clearly have that authority. But I submit that if the Export Administration Act charges you with the job of encouraging and requesting domestic concerns not to comply with the boycott, that is all you are allowed to do under the law. You cannot go any further.

You are taking an awful lot of heat here today for not stopping the compliance with some of these boycott practices when you have not

been charged by law with the authority to stop them. I think we ought to make the determination as to what the congressional intent is and then you can carry that out instead of having to take all of this heat for not having stopped boycotts which the Congress has not yet declared illegal.

Mr. ROSENTHAL. Would you please read for the record so that Mr. Meyer has the benefit of that articulation?

Mr. ERLENBORN. I will read the whole thing. I left out subparagraph (A). It says:

> It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States, and (B) to encourage and request domestic concerns engaged in the export of articles, materials, supplies, or information, to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against another country friendly to the United States.

I submit that nowhere in there does it say that they can be thrown in jail if they refuse to follow your encouragement and request. That is your charge—to encourage and request.

If we think you ought to go further, I think the Congress of the United States has the authority to do so. We can pass a law to change this and to make it illegal, rather than merely tell you to "encourage and request."

Mr. DRINAN. Will the gentleman yield?

Mr. ERLENBORN. I would be happy to yield.

Mr. DRINAN. You are expressly disagreeing with Rogers Morton, the former Secretary of Commerce, who contradicted precisely what you have said. And I quoted this before. Question: ". . . is existing legislation adequate for that purpose?"

And Rogers Morton said:

> New legislation would not be necessary to prohibit American companies from complying with boycott-related demands. Such compliance could be prohibited by regulations pursuant to the following portion of Section of 4(b)(1).

So are you disagreeing with the former Secretary of Commerce? Are you saying that Elliot Richardson would take a different view?

Mr. ERLENBORN. My recollection is that the former Secretary of Commerce is not a lawyer. I know that you are, and I know that I am. I read this language and I ask the gentleman if he could read this language of "encourage and request" and find in there any prohibition. Now as a lawyer, I just do not think you can find that.

Mr. ROSENTHAL. Mr. Mezvinsky.

Mr. MEZVINSKY. I am trying now to understand the total dollar value of transactions involving honored boycotts. Do you have any total dollar figure?

Mr. MEYER. I don't have one in mind today; no, sir.

Mr. MEZVINSKY. Can you give us a "ballpark" figure? Are we talking about millions, hundreds of millions, or billions? What are we talking about in terms of dollars in transactions?

Mr. MEYER. Trade with the Arab countries is in the order of several billions of dollars annually. I cannot now, from my own recollection, boil that down to more precise terms to say that x billions are related to boycott transactions.

Mr. MEZVINSKY. But we are talking about billions of dollars. Is that correct?

Mr. MEYER. We are talking about billions of dollars in terms of trade.

Mr. MEZVINSKY. We are talking about billions of dollars of transactions that honored boycotts. Is that a fair statement? Is that a ballpark figure?

Mr. MEYER. I can tell you that the overall export trade is in the billions of dollars. It would be a guess on my part, but I would imagine that the transactions affected one way or another by the boycott probably——

Mr. MEZVINSKY. Probably involve billions of dollars?

Mr. MEYER. Correct. If you like, I will see if we can refine that and provide the figure for the record.

Mr. MEZVINSKY. I would very much like to have that and I am sure the committee would also like that information.

[The information referred to follows:]

Our preliminary figures, compiled from reports submitted to the Department for the fourth quarter, 1975, through the end of the first quarter, 1976, indicate that exporters either complied, or indicated an intention to comply, with restrictive trade practice requests for 10,796 transactions. The total reported value for these transactions is about $1,182 million. These figures are subject to change when the final report is prepared.

Mr. MEZVINSKY. Now let us find out what kinds of tools you have for enforcement. What kind of monetary fines can you levy? And what have you assessed as far as penalties?

Mr. MEYER. The Export Administration Act authorizes certain sanctions that range from civil penalty of $1,000 for each violation on up to criminal sanctions that may involve prison terms or very substantial monetary fines. And we have in the statute the authority to suspend for whatever period of time we consider appropriate the export privileges of violators.

Mr. MEZVINSKY. What have you done in terms of the boycott?

Mr. MEYER. There have been, I think, six instances to date in which we have imposed civil penalties amounting in each case, I think, to $1,000.

Mr. MEZVINSKY. There have been six instances of civil penalties of $1,000 when we are talking about possible violations in the billions of dollars.

Mr. MEYER. No, sir; that is not correct.

Mr. MEZVINSKY. Then let's set the record straight. You are saying that in six instances you have assessed the penalty of no higher than $1,000. Is that correct?

Mr. MEYER. To date, that is correct.

Mr. MEZVINSKY. There have been no criminal penalties and no sanctions in terms of cutting off activity—simply $1,000 fines.

Mr. MEYER. That is correct.

Mr. MEZVINSKY. Why have you decided simply to limit yourself to such a low civil penalty when you had more significant penalties which you could bring forth?

Why have you not brought a criminal action? Why have you not assessed a stronger penalty? A fine of $1,000 is not even a slap on the wrist.

Mr. MEYER. It was our judgment at the time, given the facts in the particular cases, that that penalty would serve the purpose of deterring further violations by those firms and would deter other firms.

Mr. MEZVINSKY. The $1,000 was meant to act as a deterrent?

Mr. MEYER. There have been, to the best of my knowledge, Mr. Congressman, no repeated violations by those firms.

Mr. MEZVINSKY. You are not able to give the chairman and members of this committee the specifics as to the firms involved. Is that correct?

Mr. MEYER. I do not have the material with me. We did publish the information at the time the sanction was imposed. I can supply that for the record.

Mr. MEZVINSKY. Forgetting the specifics, was there a pattern of certain banks repeating this kind of activity?

Mr. MEYER. The instances of which we are speaking at the moment—and I am relying on recollection here—involved violations of the regulations in the sense that reports were not filed when they should have been filed.

Mr. MEZVINSKY. I am trying to determine whether you found an isolated case or whether you found repetitive action. Did you find one bank or one institution not reporting on a regular basis?

Mr. MEYER. No; we have found no bank in violation to date. The six instances I cited clearly involved, in our judgment, violations in the sense that reports had not been filed by exporters. They reflected, allegedly, on the part of the firms an ignorance of the regulations. And this ignorance, in all probability, extended to other requests that had not been reported by those firms.

We chose to establish the violation in one instance and to deal with that. And as I indicated earlier, there was, to my knowledge, no repetition, subsequent to the penalty, on the part of those firms.

Mr. MEZVINSKY. How do you encourage those institutions to comply? What efforts do you employ?

Mr. MEYER. We conducted a massive publicity campaign early last year, in which we circularized some 30,500 firms. We reminded them of the regulations, informed them of the Government's policy discouraging them to comply. We specifically circularized banks more recently. In addition to those informative steps, the compliance actions we took, which as I said earlier, we think had a deterrent value.

I think I should observe, in connection with your speaking of the modest nature of a $1,000 penalty, that we are not talking of the kind of violation of a regulation which prohibits compliance with certain discriminatory requests. We were talking of failure to report. I think they are essentially and substantially different.

Mr. MEZVINSKY. What do you think would be the effect of a 100 percent U.S. failure to comply with the boycott?

Mr. MEYER. I think it might have a sizable effect on our trade with the Mideast. It is an open question and I do not know how to evaluate the effect it would have on the boycott practices of the Arab countries.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

Mr. ROSENTHAL. Mr. Brown.

Mr. BROWN. Mr. Meyer, to what extent do other countries attempt to impose conditions upon financial institutions and firms in order to prohibit compliance with the Arab boycott?

Mr. MEYER. I think, Mr. Brown, that the United States is practically alone in its opposition to this boycott.

Mr. BROWN. In other words, the Japanese, the West Germans, and the French, in effect, permit their firms and their financial institutions to cooperate with the Arab boycott?

Mr. MEYER. I know of no other government that has taken the stance the U.S. Government has taken in this respect.

Mr. BROWN. I asked that question because you were somewhat hesitant in responding to the question of a colleague concerning the impact of total compliance of U.S. financial institutions and firms with the Arab boycott. And you said that you thought it would have a significant impact.

Is it not true that much of the trade that is carried on and that is subject to the Arab boycott could be carried on, although not as well perhaps, by other nations?

Mr. MEYER. Yes, sir; I think so.

Mr. BROWN. I have no further questions.

Mr. ROSENTHAL. Thank you very, very much. You have given us very useful testimony.

Our next witnesses will be Edwin Batch, vice president and associate counsel, Chemical Bank of New York, and Boris Berkovitch, senior vice president and resident counsel of Morgan Guaranty Trust Co.

We thank both of you for coming here. We very much appreciate the time you are taking from the responsible positions you hold at your institutions.

I do want to state for the record that the subcommittee wrote to a number of principal money market banks asking for information consistent with the kind of information we have asked of the two banks who appear here this morning.

The subcommittee will take the appropriate measures at the appropriate time to obtain this requested information from any noncomplying institutions. And I am sure that they will try to furnish that information in a cooperative spirit.

[The full exchange of correspondence between the subcommittee and the banks can be found in app. 4.]

Mr. ROSENTHAL Those banks that have furnished the information at this time, I think, deserve credit for doing that. Those are: Chase Manhattan Bank, the Citibank of New York and the European-American Bank. These are in addition to the Chemical Bank and the Morgan Guaranty Bank who appear here this morning.

Also, I want to read into the record, and with unanimous consent to include in the record, a letter from Citibank and one from Chase Manhattan.

The letter from Citibank says:

Pursuant to your request, we hereby confirm that from December 1, 1975, to April 15, 1976, Citibank issued or otherwise handled 235 letters of credit with an aggregate dollar value of $10,524,291 at the request of certain non-United States customers or correspondents, primarily of Middle East origin, which indicated one or more of the clauses set forth on page one of Mr. Augermueller's letter dated June 1, 1976, addressed to Chairman Rosenthal.

We also will include the letter of the Chase Manhattan bank in the record. They indicated that for that same period of time, from Decem-

ber 1 through the first quarter of 1976, they issued 375 letters of credit, amounting to the total face amount of $19,300,000.

And these were letters of credit that were in compliance with the boycott.

The European-American Bank advised us that for that same period of time, they issued 83 letters of credit in the total amount of $11.9 million.

[The letters referred to follow:]

CITIBANK,
New York, N.Y., June 7, 1976.

RONALD A. KLEMPNER, Esq.,
House of Representatives, Commerce, Consumer and Monetary Affairs on Government Operations, Rayburn House Office Building, Room B-350-A-B, Washington, D.C.

DEAR MR. KLEMPNER: Pursuant to your request, we hereby confirm that from December 1, 1975 to April 15, 1976, Citibank issued or otherwise handled 235 Letters of Credit with an aggregate dollar value of Ten Million Five Hundred Twenty-Four Thousand Two Hundred Ninety One Dollars ($10,524,291) at the request of certain non-United States customers or correspondents, primarily of Middle-East origin which included one or more of the clauses set forth on page one of Mr. Augermueller's letter dated June 1, 1976 addressed to Chairman Rosenthal.

Very truly yours,

PATRICK J. MULHERN,
Vice President.

THE CHASE MANHATTAN BANK,
New York, N.Y., June 3, 1976.

Congressman BENJAMIN S. ROSENTHAL,
Chairman, Commerce, Consumer and Monetary Affairs Subcommittee of the Committee on Government Operations, House of Representatives, Congress of the United States, Rayburn House Office Building, Room B-350-A-B, Washington, D.C.

DEAR CONGRESSMAN ROSENTHAL: I am a Vice President of The Chase Manhattan Bank, N.A. in charge of correspondent banking relationships in the Africa and Middle East Banking Group. Since the matters referred to in your letter of May 19, 1976 to Mr. Butcher concern my Banking Group, Mr. Butcher has asked me to reply to your questions.

I am unable to respond at this time concerning inclusion of economic boycott provisions in letters of credit advised or confirmed by our Bank for a period going as far back as October 1, 1973, since our records with respect to older letters of credit are in storage and are not indexed in any manner that would provide ready access to the information requested.

Beginning, however, with the imposition of the amended Department of Commerce Regulations on December 1, 1975, which extended the Regulations to related service organizations, including banks and insurance companies, we instituted procedures for review of documentary conditions contained in letters of credit in order to avoid participation in any transaction prohibited under the Regulations and to comply with the quarterly reporting requirements. These procedures are also applied in respect of transactions within the scope of Chapter 622 of the Laws of New York of 1975 which took effect on January 1, 1976.

The following numbered paragraphs are in response to the correspondingly numbered paragraphs of your letter.

(1) With respect to the periods for which we have filed reports with the Department of Commerce (December 1975 and first quarter of 1976):

(a) Letters of Credit advised, and in cases confirmed, by us involving economic sanctions against the State of Israel reportable under Section 369.3 of the Regulations were as follows:

Approximate number of letters of credit, 375; approximate total face amounts of letters of credit, $19,300,000.

(b) Arab countries in the Middle East and African countries were referred to in such letters of credit.

(c) The policy of our Bank is to comply with all applicable legal restrictions and to make reports as required by the Regulations.

We understand that there are a number of so-called "black lists" but we do not obtain any such lists and have no knowledge of the reason for any person or company being "blacklisted" except as may be reported in the public press.

We have not as a matter of policy, as well as of law, issued, advised or confirmed letters of credit which involved discrimination on the basis of race, color, religion, sex or national origin.

(2) I have no knowledge of any instances of requests for information of the sort referred to in this question.

(3) We are, of course, not in a position to disclose our confidential relationships with our customers. It is, however, known that we have had and continue to have a major relationship with the State of Israel going back almost to statehood, including acting as agent for State of Israel bonds. In the unlikely event that we would have knowledge that a customer or a potential customer were on a "boycott" list of any foreign country, league or association, such fact would have no bearing on our maintaining or establishing credit facilities or other banking relationships with such customer or potential customer.

(4) We consider our relationships with our customers to be highly confidential and we would not as a matter of policy, respond to requests for information of the type referred to in question (2) were any such requests to be received.

Since December 1, 1975, we have inquired of the Department of Commerce from time to time regarding the application of the Regulations to specific situations and, following the publication of the letter from the Board of Governors of the Federal Reserve System dated December 12, 1975, we made inquiry concerning the effect of such letter which, as you know, was subsequently clarified by a further letter from the Board dated January 20, 1976.

I believe that the above inforamtion is fully responsive to your questions to the extent of the information we were in a position to assemble with the short time allowed and I understand that it will not be necessary for a representative of my Bank to appear personally at the hearings of your Subcommittee on June 8, 1976.

Very truly yours,

RICHARD A. FERN,
Vice President.

Mr. ROSENTHAL. Mr. Batch, you have a statement. We would be very pleased to hear from you.

STATEMENT OF EDWIN E. BATCH, JR., VICE PRESIDENT AND ASSOCIATE COUNSEL, CHEMICAL BANK OF NEW YORK; ACCOMPANIED BY JIM DUFFEY, COUNSEL

Mr. BATCH. Before I read my statement, I would like to say that I am represented by my counsel, Jim Duffey, of the firm of Cravath, Swain, and Moore. Jim is sitting behind me.

I am Edwin E. Batch, Jr., vice president and associate counsel of Chemical Bank, and have general responsibility for rendering legal advice to the international division of Chemical Bank. In this capacity, I am familiar with legislation and regulations on restrictive trade practices and have closely followed recent developments to insure compliance in this area. During the past 1½ years, I have requested guidance on this matter from the New York State Subcommittee on Human Rights, the New York State Human Rights Division, the New York State Banking Department, the Federal Reserve, and the Commerce Department. And in February of this year, I testified before the New York State Subcommittee on Human Rights.

In your letter of May 19, 1976, to the Chemical Bank regarding boycott activities of certain foreign countries against the State of Israel and those doing business in or with the State of Israel, you listed four questions and inquired as to Chemical Bank's policies.

Chemical Bank does not support boycotts and restrictive trade practices. Further, Chemical Bank does not issue letters of credit with boycott clauses. Letters of credit issued by foreign banks in favor of the U.S. exporters do come into Chemical Bank for delivery to the exporters. These incoming letters of credit sometimes require boycott certification from the exporter. If the exporter does not know the foreign bank, he might ask us to confirm the letter of credit. This act obligates us to pay the exporter upon presentation of the documents required by the letter of credit and then seek reimbursement from the foreign bank. Laws and regulations do not permit us to unilaterally change any terms and conditions in these incoming letters of credit. Our only option would be to refuse to deliver them to the exporter. The exporter then would have no bank asurance of being paid for his goods. By our refusal, we would be restraining trade and creating a counter boycott. This, we believe, would be an undesirable and inappropriate position for a private institution such as Chemical Bank.

Since October 1, 1973, our bank has handled incoming letters of credit containing requests for boycott certificates or other restrictive trade practices. We were able to estimate the number of these transactions at approximately 2,500. These transactions represented dollar value of approximately $90 million. They emanated from various countries in Africa and the Middle East. It should be noted that the restrictive clauses contained in these letters of credit transactions are of the type described in section 369.3 of the Export Administration Regulations. And since December 1, 1975, we have been reporting these requests to the Commerce Department, as required by the regulations. Chemical Bank has never taken any action on letters of credit which contain clauses which discriminate or have the effect of discriminating against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin, and are described in section 369.2 of the regulations.

With regard to questions 2 and 4, our answer is simply "No." Chemical Bank would never accept deposits where, as a condition, the depositor requested or required information regarding bank business with foreign nations or other customers. With regard to question 3, since July 1, 1973, our bank has not substantially decreased the amount of any line or business or services conducted with or for the State of Israel or any company which is a citizen or domicilary of the State of Israel. We have never decreased or increased any line of business or services with a company included on a boycott list of any foreign country, league, or association because of such listing.

Thank you.

Mr. ROSENTHAL. Mr. Berkovitch, do you have a prepared statement?

STATEMENT OF BORIS S. BERKOVITCH, SENIOR VICE PRESIDENT AND RESIDENT COUNSEL, MORGAN GUARANTY TRUST CO.; ACCOMPANIED BY HENRY RATHBUN, COUNSEL

Mr. BERKOVITCH. I do, sir.

Mr. ROSENTHAL. Would you like to read it?

Mr. BERKOVITCH. I will.

I am accompanied by Mr. Henry Rathbun, who is sitting behind me, from the firm of Wilmer, Cutler & Pickering. They are Washington counsel for Morgan Guaranty.

I am Boris Berkovitch, senior vice president and resident counsel of Morgan Guaranty Trust Co. of New York, and the officer directly concerned with internal procedures intended to assure compliance by the bank with the laws and regulations applicable to its business. As requested in Chairman Rosenthal's letter May 19, 1976, I am appearing to testify on the subject of boycott activities against the State of Israel and related matters.

Turning to the specific inquiries in the letter, I will, with the chairman's permission, take them up in this order:

Question 2, in which we are asked to cite all instances since October 1, 1973, in which the bank received, from depositors or other clients, requests for information concerning business transacted by the bank in or with the State of Israel, or with persons or firms who are citizens of or do business or are otherwise associated with Israel, or who are of a specified race, religion, or national origin, or who are included in a boycott list.

Question 4, in which we are asked to state the bank's policy regarding requests for information of the kind described in question 2.

Question 3, in which we are asked whether since July 1, 1973, the bank has decreased by 50 percent or more any banking facilities or services extended to the State of Israel, or to any firm which is a citizen or resident of Israel or which is included in a boycott list.

Question 1, in which we are asked whether since October 1, 1973, the bank has processed letters of credit containing conditions which tend to further a boycott against the State of Israel, or against persons or firms engaged in trade or otherwise associated with Israel, or on the basis of race, religion, sex, or national origin, or against persons or firms who appear on a boycott list. Information concerning the volume of such letters of credit is also requested.

In addition, we are asked to report what guidance the bank may have sought on any of these matters from the regulatory agencies since October 1, 1973.

It may be appropriate to begin our response to these questions by informing the subcommittee that the bank neither possesses nor has access to any boycott list and is unaware of the identity of persons or firms included in any such list, except as may have been reported from time-to-time in the press.

As to questions 2 and 4, and based on the recollections of officers, including myself, to whom any such requests would have been referred. Morgan Guaranty has never received from a depositor or other client a request for information of the kind described in question 2.

Our policy in this regard is a simple one. We do not disclose relationships with particular clients to any other client or, for that matter, to any third party except with the consent of the client concerned or pursuant to legal process. Should a request for information of the kind described in question 2 be received by the bank, the request would be rejected.

As to question 3, Morgan Guaranty extends facilities and services to its clients on the basis of their needs and the credit-related criteria integral to the conduct of its commercial banking business. Increases and decreases in facilities extended to or business done with any particular client reflect these considerations and not the factors mentioned

in question 3. More specifically, the bank has not reduced business done with any client on the basis of such factors.

Question 1 relates to letters of credit. The involvement of a U.S. bank in an international letter of credit transaction can be readily described. The U.S. bank confirms or advises to the beneficiary of the letter of credit, normally an exporter, that the letter of credit has been issued by a foreign bank, and that drafts drawn against the credit must be accompanied by documents in conformity with the requirements of the credit. Typically, these would include invoices, shipping documents, and evidence of insurance covering the shipment. Letters of credit issued by banks located in countries adhering to the economic boycott of Israel often require as further conditions to the payment of drafts drawn thereunder certain certifications or declarations by beneficiaries. These conditions to payment are typified by requirements such as the following: (1) Declarations that the vessel or aircraft is not Israeli owned, does not operate under the Israeli flag, and will neither call at Israeli ports nor travel through Israeli waters or airspace; (2) declarations that the goods shipped are not of Israeli, South African, or Rhodesian origin; and (3) declarations that neither the carrier, exporter, manufacturer, or supplier of goods, nor any branch, affiliate, or subsidiary of such concern is blacklisted by authorities in the country of destination.

Mr. ROSENTHAL. Isn't that a catchall phrase? That takes in practically anything.

Mr. BERKOVITCH. I wouldn't know how to characterize it, sir. These requirements as to this kind of declaration frequently appear in letters of credit issued in that part of the world.

A bank which has confirmed or advised a letter of credit will pay drafts against the credit only if the drafts are accompanied by documents conforming on their face to the specifications of the credit. The bank does not normally conduct an investigation with respect to or warrant the accuracy of the documents presented to it.

As the subcommittee is aware, the revised regulations under the Export Administration Act issued by the Department of Commerce, which became effective on December 1, 1975, have a bearing on the subject of boycotts.

The regulations prohibit exporters and related service organizations—a term which includes banks—from furnishing any information or taking any action which discriminates against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin. Morgan Guaranty has complied with the regulations since December 1, 1975; and prior to that date, we declined to process letters of credit containing restrictions linked to religion, race, or ethnic background.

While the revised regulations do not prevent banks from taking actions which might implement economic sanctions applied by one country against another country friendly to the United States, the regulations do require any requests for such action to be reported to the Department of Commerce. And Morgan Guaranty has complied with these requirements.

In preparation for this hearing, we reviewed our records from December 1, 1975—the effective date of the revised Department of Commerce regulations—through March 31, 1976. During this 4-month pe-

riod, 824 letters of credit in the aggregate amount of $41,237,815 issued by banks in Arab and other Asian and African countries, and containing boycott clauses reportable, but not prohibited under the regulations, were processed by Morgan Guaranty.

There were also received during the 4-month period 24 letters of credit from banks in these countries, for an aggregate amount of $1,539,717, containing clauses in the category deemed unacceptable under the regulations. Morgan Guaranty did not process these letters of credit unless and until the offending clauses were removed by the issuing banks, which was done in 23 out of these 24 instances.

There were, to the best of my knowledge, only two occasions on which guidance on boycott matters was requested by the bank from the regulatory agencies. In one instance we asked the advice of the Department of Commerce in determining whether a restriction in a letter of credit was acceptable or unacceptable under the regulations. In the other instance the bank, as a member of the New York Clearing House Association, participated in an effort to obtain clarification of a letter from the Federal Reserve Board on the subject of the boycott.

Mr. Chairman, Morgan Guaranty has adhered carefully to the regulations under the Export Administration Act and believes that in their present form they deal adequately with those relatively rare occasions on which religious or racial discrimination is attempted to be introduced into international letter of credit transactions.

As to the broader question of whether congressional action is called for with respect to the economic boycott of Israel, the administration has enunciated a position which, in our judgment, is consistent with the economic interests of foreign policy objectives of the United States.

In appearances before congressional committees, State, Treasury, and Commerce Department officials have urged the Congress to refrain from actions risking injury to the commercial ties between this country and the Middle East involving billions of dollars in export trade and many thousands of jobs. The administration representatives have pointed out that such actions would carry gravely adverse implications not only for our balance of payments and domestic economy, but also for this country's efforts to move the parties to the Arab-Israeli conflict toward a peaceful settlement.

That concludes my statement.

Mr. ROSENTHAL. Thank you very much, Mr. Berkovitch. That was a very clear and, obviously, a very thoughtful statement. Could you tell us a little more about the circumstances surrounding the facts you report in the second paragraph on page 5?

In other words, there did come a time when 24 letters of credit were received which the bank rejected for one reason or another. And in 23 out of those 24, the offending clause was removed. Can you tell us more about that and what conclusions you drew from that?

Mr. BERKOVITCH. In those cases where it appeared that the particular provision would have been in violation of the Commerce Department's regulations, as interpreted by the Commerce Department, we communicated with the issuing bank abroad and informed the bank that we could not process that letter so long as that particular condition or provision remained in the letter of credit.

And as my statement informed the committee, in 23 instances out of the 24, that provision, which would have been one prohibited as

discriminatory under the regulations, was removed by the bank that issued the letter of credit. And we went ahead and processed them.

Mr. ROSENTHAL. What was that provision?

Mr. BERKOVITCH. It had to do with a hexagonal star, to which I think the previous witness, Mr. Meyer, referred throughout his testimony. It was a provision that would have prohibited either the shipping documents or the goods or the containers carrying the goods from carrying on them a hexagonal star. Those were the exact words used in the provision.

Mr. ROSENTHAL. I am interested in your opinion in expanding on this event. If the Congress changed the law to make the economic boycott illegal and you continued to process letters of credit, do you think you would meet more resistance or would you meet the same kind of situation as the one in which you said "No" and had the restriction removed in 23 out of 24 cases?

Mr. BERKOVITCH. We, I think, have to look at this from at least two standpoints. One is the information by high-level officials within the administration—State Department people, Treasury people, and Commerce people—which has been enunciated. It is their view——

Mr. ROSENTHAL. No; I am asking for your view. I know their view; their view is easy.

You were in a situation in your bank where you told these people that a particular clause was against regulations. And in 23 out of 24 situations, they withdrew that clause.

In your opinion, if the Congress expanded the restrictions or expanded those areas in which it would become illegal, do you think the same pattern would evolve? Would, in 23 out of 24 cases, the offending language be removed?

Mr. BERKOVITCH. Mr. Chairman, the people who are responsible for the bank's business in that part of the world are generally of the opinion that to extend the prohibitions to the economic aspect of the boycott would be extremely disruptive of trade relations between those countries and the United States. That is their view. And it is a view that is supported, apparently, by the officials who are charged with carrying out the international economic policies of the United States.

Mr. ROSENTHAL. I appreciate that. But I am curious as to your view. You are the officer in the bank charged with making everything legal.

Mr. BERKOVITCH. Are you asking for my personal view, sir?

Mr. ROSENTHAL. Yes. Do you have such an opinion?

Mr. BERKOVITCH. I don't have a personal view. I do not travel extensively on bank business. I am a bank lawyer. I think I am familiar generally with our business and I communicate daily with officers who are responsible for one or another aspect of the bank's business. And I would think that the bank's view would be that to extend the prohibitions to the economic aspects of the boycott would be disruptive.

Mr. ROSENTHAL. Was that their view prior to the new Commerce Department regulations in December? Would they have had the same view prior to the 23 out of 24 experiences?

Mr. BERKOVITCH. I don't know how to respond to a question as to what view they might have had.

Mr. ROSENTHAL. That is highly speculative.

Mr. BERKOVITCH. It is speculative. I think that of the banks which issued the letters of credit in these 24 instances, at least 23 of them recognized that they were probably going beyond their own mandate which was, we believe, to participate in an economic boycott of Israel and not to introduce purely religious or racial factors into that boycott. At least 23 of them recognized that.

We would have the gravest doubt as to whether they would respond in the same way were the economic aspects of the boycott to be made unlawful for banks in this country and for exporters in this country. We suspect that the views expressed by others in the Government are the correct views on that subject.

Mr. ROSENTHAL. I am amazed that you continually rely on people in Government for your authority. That is out of style these days.

Mr. BERKOVITCH. The people who do business in that part of the world for our banks share those views.

Mr. ROSENTHAL. I anticipate that the House International Relations Committee will next week pass an amendment that I and others intend to offer which will make the economic boycott illegal. How do you think you will be able to live with that situation? Do you think you will lose all of your Middle East business?

Mr. BERKOVITCH. I suspect that the exporters in this country, those merchants, manufacturers, and others who are doing business in that part of the world and sending our products to those countries, may find that those countries will turn more and more to other suppliers in Europe and the Far East and elsewhere. That is our judgment on it.

Mr. ROSENTHAL. I appreciate your judgment and I respect your position. Do you know how people get off the boycott list?

Mr. BERKOVITCH. No, sir; I do not.

Mr. ROSENTHAL. Have you heard about it at all?

Mr. BERKOVITCH. Only to the extent that I have read about it, Mr. Chairman.

Mr. ROSENTHAL. Have you read how they get off?

Mr. BERKOVITCH. I have read some versions of how they get off.

Mr. ROSENTHAL. How do they get off?

Mr. BERKOVITCH. I have read that they are able to get off by engaging intermediaries to help them get off.

Mr. ROSENTHAL. Then that would be easy to do, I would think.

Mr. Batch, you may want to answer this. How does the bank make money on letters of credit? Do they get a commission or a fee or what?

Mr. BATCH. Yes; there is a commission or a fee for service rendered.

Mr. ROSENTHAL. Of the total amount of letters of credit that your bank did last year, can you give us a ballpark figure of how much money you made?

Mr. BATCH. No; I do not have the figures for the letter of credit department per se.

Mr. ROSENTHAL. What percentage of the amount is it? We can do the arithmetic ourselves.

Mr. BATCH. The fees are confidential. They do vary for the type of service that is rendered. For example, an advice of a letter of credit that is incoming will be one fee; and, confirmation, which exposes the bank creditwise, would be an additional fee.

Mr. ROSENTHAL. Could you give us just some idea? I have not the slightest idea. Is it usually about 30 percent or 20 percent or 10 percent?

Mr. BATCH. I would really rather not say because it is confidential. But it is a percentage of 1 percent of the principal amount showing on the letter of credit. I would rather not say what percentage because this is against policy. It is known, of course, to the exporters who do business with us.

Mr. ROSENTHAL. You are a lawyer and maybe you would want to answer this: Now the Congress, in the Export Administration Act, has set down policy. It did not make it illegal to comply with an economic boycott, but it said that it is against the U.S. principles. The President has said that; the Chairman of the Federal Reserve Board has said that; the Comptroller of the Currency has said that; the head of the FDIC has said that. It is still not illegal.

But for a bank that has some kind of quasi-governmental responsibility to serving the community, how do you justify violating all of those precepts? Is it on the basis of the 1 percent of the letter of credit or some such?

Mr. BATCH. I missed that question entirely. Banks do not have a quasi-governmental responsibility to my knowledge.

Mr. ROSENTHAL. I think I overstated it. Mr. Burns stated it more nicely than I did.

Mr. BATCH. Chairman Burns referred to the misuse of banking privileges. I think that is what you are referring to.

Mr. ROSENTHAL. I will read you exactly what he said.

> The Board believes that even this limited participation by U.S. banks in a boycott contravenes the policy of the United States.

Now what you folks are doing is contravening the policy of the United States. Why?

Mr. BATCH. When that letter came out on December 12 we discontinued passing through these letters of credit at Chemical Bank. So I cannot answer your question as asked.

Mr. ROSENTHAL. How would you respond to that, Mr. Berkovitch?

Mr. BERKOVITCH. Mr. Chairman, subsequent to the letter from which you quoted, the Board of Governors issued another letter, dated January 20, 1976.

Mr. ROSENTHAL. That is the letter from which I am reading.

[The December 12, 1975, and January 20, 1976, letters from the Federal Reserve Board together with the January 12, 1976, letter to the Board from Paul Volcker, of the Federal Reserve Bank of New York, are reprinted in app. 1.]

Mr. BERKOVITCH. In the letter of January 20, 1976, among other things, the Board said that primary responsibility for implementing and enforcing U.S. policy in this area rests with the Department of Commerce.

The purpose of the Board's December 12 statement was to direct the attention of member banks to this policy as well as to the possible applicability of other laws, including Federal antitrust laws. It was not intended to create new legal obligations for banks, but rather to insure that they are familiar with their existing obligations under the Export Administration regulations and other pertinent laws.

Mr. ROSENTHAL. I was reading from the January 20 letter. And it says clearly:

The Board believes that even this limited participation by U.S. banks in the boycott contravenes the policy of the United States as announced by the President and as set forth by the Congress.

Now I tell you that it is not illegal; it is a violation of U.S. policy. And on page 3 of the earlier letter, he said:

You are requested to inform member banks in your district of the Board's views on this matter; and, in particular, to encourage them to refuse participation in letters of credit that embody conditions, the enforcement of which may give effect to a boycott against a friendly foreign nation or may cause discrimination against U.S. citizens.

I repeat that it is not illegal. You are not doing something that is illegal. It is a violation of U.S. policy. And I merely want to know how you justify it.

Mr. BERKOVITCH. I do not believe that any private institution can resolve what appears to be a conflict or a divergence in the views expressed by various parts of this Government.

We have been told by other spokesmen of major administration departments that to take any further step and to decline to participate in trade with that part of he world on this basis would be or could be severely disruptive and harmful to our own economy and result in a loss of revenue and trade. And equally important from our point of view, and from the committee's point of view, I am sure, it could do harm to the efforts in which our Government has persisted long and patiently to somehow bring the parties to the Arab-Israeli conflict to a resolution of their quarrel. And we regard that too as being part of the policy of the United States.

Mr. ROSENTHAL. In other words, one of the reasons you and your bank are participating is that you think it is good international relations and will help bring the parties to a successful mediation.

Mr. BERKOVITCH. We think it would be bad international relations to refuse to conduct trade with that part of the world.

Mr. ROSENTHAL. I may have overstated the special responsibility of the banks, but let me read to you from the letter of June 3, 1976 from Chairman Burns to this committee. He said: "There is a significant question in my mind whether the congressional declaration of policy that the United States 'oppose' boycotts against friendly foreign nations does not impose responsibilities upon private businesses that depend upon Government licenses and privileges that are distinct from those imposed upon other businesses in which there is little or no Government involvement. In December of last year the Board of Governors published a statement with respect to boycott practices suggesting that the commercial banking business—which benefits substantially from such activities of the U.S. Government as the provision of deposit insurance, the operation of the Federal Reserve System, and the issuance of national bank charters—may well be viewed as a business having such special responsibilities."

Now do you think you have met your special responsibilities?

Mr. BATCH. I think we are crossing back and forth here. Our policies are a little different from Morgan's. I would like to say that we too look on the whole issue as a political issue. We are not making political determinations, but it seems that that is coming out.

We read those letters as lawyers. I read those letters as a lawyer. The second letter from Chairman Burns, when it is read from the

viewpoint of a lawyer, says that no additional legal obligation was intended. And banks are advised to follow the regulatory authority of Commerce, which has the authority in this area.

Mr. ROSENTHAL. All you had to do with Commerce was file a statement as to the letters of credit issued.

Mr. BATCH. No, no—as to the full regulations. You have to be apprised of what is prohibited and what is allowed and what you must report. So you have to be on base with the regulations, and you have to follow them.

We also attended meetings and seminars whenever we could get some information on what those regulations meant. And in early December a representative from Commerce, I think it was the Director of Operations, addressed a group at the New York Chamber of Commerce. And there were about 300 people in the hall.

One woman, who was a representative of an exporter, stood up and said, "I have trouble with a lot of banks in New York—two in particular—who are refusing to handle my incoming letters of credit."

The Director of Operations for Commerce replied to that by saying, "Have the banker get in touch with us and we will read the regulation to him. He is not prohibited from passing through those letters of credit to you."

So we are listening to the regulator speak directly on this issue and we find no prohibition or intended prohibition and no mention of "This is another attempt to convey the policy of the United States."

All they were doing was exercising their authority under the regulations to acquaint people with the lack of prohibition on the second category of clauses.

Mr. ROSENTHAL. Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman.

The fascinating thing to me about this whole discussion is that if a policy of this Nation is to be something more than policy, it is very simple for the Congress to establish that that policy involves indisputable mandates. And this Government has not seen fit to make all of those conditions and all of the general concepts of this policy law.

Therefore, I would presume that ipso facto the Nation and the Government does not expect all of its policy determinations to have the quality of mandated law.

Mr. BATCH. If that is a question, I will respond to it, Mr. Brown.

Mr. BROWN. It was probably more of a statement. But it is obvious that the Government has purposefully and intentionally created a gray area because with respect to some things, it has said "You shall not." But in other cases with respect to other matters, it has said, "We hope you won't." But necessarily under the latter, it is contemplated that you will.

Mr. BATCH. I am not disagreeing with your statement at all; I am agreeing with it. The full statement was made in 1969 with the act. And since that time—and the regulations came out subsequent to the act—banks were not mentioned. It was really an exporter's regulation at that point.

And that ties in with what Mr. Erlenborn said earlier when he mentioned that the advice and encouragement was directed toward the exporter. The banks only came under the sanctions of the regulation as of December 1.

And since 1969, as we see in the newspapers, many agencies of the Federal Government were involved in different ways in violating that policy as stated. So it is hard to determine, from a private institution's point of view, what that policy statement means until it is clarified in the regulation.

Mr. BROWN. Is there not a significant difference also in how you treat inquiries with respect to matters that are particularly involved with your business of banking—that is, information with respect to depositors, your officers, et cetera, and things of that nature—and your function as an intermediary in handling letters of credit?

In the latter case, it is like saying that you will not accept a letter of credit if someone demands a different document than you are accustomed to dealing with.

Mr. BATCH. That is correct.

Mr. BROWN. It seems to me that those are two quite different things. In the one case, I can see that you are an instrumentality of sorts of the Government with respect to its policy because you are chartered. And in the first instance, that has a greater significance than in the second instance where you really would not have to be a bank in order to handle a letter of credit.

Mr. BATCH. That is true.

Mr. BROWN. And you would not be regulated by the Fed or by anybody else and you would not be chartered as such.

Mr. BATCH. That is right.

Mr. BROWN. And then you get back to the very law we are talking about. The first sentence says:

> It is the policy of the United States both to encourage trade with all countries with which we have diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest, and to restrict the export of goods and technology which would make a significant contribution to the military potential of any other nation or nations which would prove detrimental to the national security of the United States.

The first part of the paragraph is the part that is significant. And it starts out "* * * to encourage trade."

What if all banks in the United States decided to comply with that which is not presently mandated? Can we unilaterally effect an international change in this area?

Mr. BERKOVITCH. I think you would be faced in that event both with a domestic problem and an international problem. The exporters in this country are doing business with the Middle East and other Arab countries. Those countries want the products that our exporters are prepared to furnish to them. And companies in this country expect banks to act as intermediaries in much the manner you have described.

To suddenly terminate the ability of a bank to perform that function could, I think, have an impact on our domestic economy as well as on the international subject which we explored earlier.

And for that reason, we think those administration spokesmen who have come before the Congress have some basis in the thrust of their remarks, as we understand them, that Congress should be very careful and think long and hard before taking steps that would drastically affect these economic and political interests.

Mr. BROWN. This committee only has jurisdiction in this area because of its jurisdiction over financial regulatory authorities—the Fed, the FDIC, the Comptroller, et cetera. Therefore, we seem to be focusing a disproportionate amount of attention upon the function of banks in this problem.

Certainly, insofar as your profit and loss statement is concerned if you have complied to the fullest not only with the regulations, but with the policy as it has been stated, this would have a relatively insignificant impact upon your profit and loss statement. But it would have a tremendous impact upon similar compliance by exporters, would it not?

Mr. DRINAN. Would the gentleman yield on that? I would like to add to the question, if I might.

Mr. BROWN. Yes.

Mr. DRINAN. What impact does this have on Israel? This has a very adverse economic impact on Israel. And that is to be considered. I would like, Mr. Brown, to have the gentleman respond to that.

Mr. BERKOVITCH. I really cannot pretend to be an expert on the economic impact which the boycott activities of the Arab countries have had on Israel. I am sure there are others in the Government and elsewhere who could respond to that.

Mr. BROWN. But is it not true that Israel actually deals with financial institutions and exporters who basically comply with the boycott?

Mr. BERKOVITCH. I am sure that is the case.

Mr. BROWN. So in effect, Israel doesn't even insist upon a hands-off attitude and an isolation from those who do engage in and comply with the Arab boycott.

Mr. BERKOVITCH. I am unaware that it does.

Mr. ROSENTHAL. The time of the gentleman has expired.

Mr. BROWN. I am satisfied that that is the truth.

Mr. ROSENTHAL. Congresman Drinan.

Mr. DRINAN. Thank you, Mr. Chairman.

You state on page 6, Mr. Berkovitch, that in our judgment—whoever "our" is—that you think that the present situation is fine. But to come back to my basic point, this obviously is injurious in an economic way to Israel. There is just no denying that.

And you are saying that the bankers are opposed to this amorphous and incoherent policy being changed. You find this policy satisfactory. But how does it satisfy the foreign policy objectives of the United States if in fact Israel is being injured in a very serious way in an economic warfare when Morgan Guaranty cooperates in causing this this economic harm to Israel?

Mr. BERKOVITCH. Mr. Drinan, I think we have addressed ourselves to that issue.

Mr. DRINAN. You haven't even mentioned economic harm to Israel. And it is there.

Mr. BERKOVITCH. We have not been asked to comment on the economic harm to Israel.

Mr. DRINAN. I am asking you to comment right now.

Mr. BERKOVITCH. I do not know the extent to which the boycott is harming Israel.

Mr. DRINAN. It is self-evident that it exists. The chamber of commerce of Israel will tell you it exists. And it exists, obviously, when, as you say, you do business and give letters of credit, they cannot ship the material in an Israeli-owned aircraft or vessel. Obviously, it is injurious to El Al.

Now if we should pass a bill such as this, will the banker's lobby fight this and try to defeat it in committee or on the floor?

Mr. BERKOVITCH. I cannot predict what the banker's lobby might do, sir.

Mr. DRINAN. Mr. Berkovitch, on another point you state, on page 5, that you issued 824 letters of credit and that the banks are in Arab and other Asian and African countries. Do banks in Asian and African countries comply with the anti-Israel boycott?

Mr. BERKOVITCH. Some of them do, sir.

Mr. DRINAN. Is that number increasing?

Mr. BERKOVITCH. I would not say it is increasing. I think it is probably stable. But we do not keep a book, so to speak, on precisely which banks and which countries are issuing letters of credit of this kind except as they happen to come to us. When they do, we report them.

Mr. DRINAN. We are talking about something that is deeper than just the Arab petrodollars. We are talking about, according to your testimony, the boycott provisions that are now inserted by banks in Asian and African countries that are in sympathy with the anti-Israeli objectives of the Arab League. Is that right?

Mr. BERKOVITCH. Yes.

Mr. DRINAN. You indicate also that you had some collaboration with other bankers and that you sought a clarification of a letter from the Federal Reserve. Does that mean that you people got together in New York and urged the Federal Reserve to reverse its position?

Mr. BERKOVITCH. Before answering that last question, Mr. Drinan, I would like to correct what I think may have been a misimpression on your part that Morgan Guaranty issues letters of credit of the type described in my statement. It does not issue such letters of credit. It does, however, confirm to the beneficiaries or advise to the beneficiaries that these letters have been issued by banks in the countries mentioned in the statement.

Now as to the effort to obtain a clarification from the Federal Reserve Board of its earlier letter of December 12, 1975, Morgan Guaranty is a member of the New York Clearing House Association, which consists of, I believe, 10 banks in the city of New York. And when the first letter of December 1975 was published, many of these banks felt that it was unclear as to what the purpose and the effect of that letter might have been in this boycott area. And they did, through the association, ask for clarification. And this resulted in the issuance of a second letter in January.

Mr. DRINAN. Mr. Berkovitch, would you have a letter from your bank or from the Clearing House Association that we could see as to why and on what basis you people protested the letter of Dr. Burns?

Mr. BERKOVITCH. I think, sir, that we did not protest in any letter. We felt that it needed clarification. The way in which we tried to get that clarification was by sending representatives of the Clearing House to confer with the staff of the Federal Reserve Board. I do not

have nor have I seen nor am I aware of any letter which might have been sent to the Board on this subject.

Mr. DRINAN. Mr. Batch, your bank has a branch in Beirut.

Mr. BATCH. No; we have a subsidiary.

Mr. DRINAN. And I take it that they are actively soliciting business regularly and I assume that they have a lot of dealings with the Arab nations and perhaps with the Arab boycott.

Mr. BATCH. We wish that they were doing business actively, but, of course, they are not. They have been closed for quite awhile. So the letter of credit operation obviously has been closed as well.

Mr. DRINAN. But prior to the latest tragedy in Lebanon, I assume that they were actively seeking business from Arab sources and that attached to all of this business was the economic boycott.

Mr. BATCH. Prior to September 1975, before the first round of the revolution began in Lebanon, our bank did have a minor letter of credit operation. It was really minor in the dollar sense. And in the letters of credit issued there; yes, there was included the standard boycott clause.

Mr. DRINAN. Would you agree that by complying with that boycott and by participating in issuing these letters of credit that the Chemical Bank actually participated in economic hardship coming to Israel?

Mr. BATCH. No; I would not agree with that statement.

Mr. DRINAN. Why not? That is the inevitable and inexorable result.

Mr. BATCH. Back to that statement on the hardship to Israel, you mentioned El Al, for instance. Is it practical to believe that the Arabs would start shipping on El Al if it weren't for these provisions or if it were required? The Israelis do not ship on Arab ships or on Arab airlines, and for prudent reasons. And the Commerce regulation does not sanction that clause in the Israeli letters of credit.

Mr. DRINAN. Are you telling me that the Arab boycott is not working?

Mr. BATCH. I cannot say that as a matter of fact of my own knowledge.

Mr. DRINAN. But you have to have knowledge of it. It is self-evident that Israel is being harmed economically.

Mr. BATCH. But it is not. I attended the seminar at the University of Texas in February of this year where a representative of the Israeli Government spoke. I think his name was Zeev Sher. He is in their commerce ministry. And he said in fact that the boycott has not had a significant impact on Israel. I know nothing else of my own knowledge that would disprove that. But your statement that it must have an impact on Israel, I do not think is borne up by the facts.

Mr. DRINAN. This is so. If that is the reality, why are the Arabs perpetuating it and why do you people go along with the Arabs?

Mr. BATCH. We don't go along with the Arabs. As I have said, we oppose boycotts and blacklists. We would rather not see them.

Mr. DRINAN. You are very self-righteous here. But you really do not oppose the boycott because you say you are a private institution. And you say that, "By our refusal, we don't refuse. We are a private institution."

But if that is so, why don't you try to persuade the Arabs that this is an ineffective way of making economic warfare against Israel?

Mr. BATCH. I think the Arabs have their own reasons. I have read the articles in the newspapers by Saudi Arabia, for instance, about the backlash on the Arab side to the attempts to increase the spectrum of the prohibition with regard to boycott clauses. But we are not in a position to move them one way or the other on the issue.

Mr. DRINAN. I can see that I am not going to move you people at all and that you like things the way they are.

Mr. BATCH. I have not said that.

Mr. DRINAN. I am sorry; that is more Mr. Berkovitch's attitude.

Mr. BERKOVITCH. No, sir, we do not like things the way they are at all. I think that you will find that our bank, and I am sure any other bank or any other citizen, wishes devoutly for an end to the hostilities and the conflict which will bring along with it an end to the boycott.

Mr. ROSENTHAL. Would you yield?

Mr. DRINAN. Yes.

Mr. ROSENTHAL. The intermediate solution is contained in a letter that Dr. Burns sent to this subcommittee on June 3, 1976 about Congress's clarifying it and taking folks off the hook. And I read from his letter.

> The time has come for Congress to determine whether it is meaningful or sufficient merely to "encourage and request" U.S. banks not to give effect to the boycott. It is unjust, I believe, to expect some banks to suffer competitive penalties for responding affirmatively to the spirit of U.S. policy, while others profit by ignoring this policy. This inequity can be cured if Congress will act decisively on the subject.

That I think is our mandate.

Mr. DRINAN. Thank you. I guess my time has run out. I wonder if there is any bank, or banks, in America that has demonstrated that it wants to be a profile in courage and who has said to the Arab people, "We are not going to participate in this, so you go elsewhere." Maybe these banks have not suffered at all.

Mr. BATCH. Particularly if they had no Arab business.

Mr. DRINAN. That is irresponsible.

Mr. ROSENTHAL. The clue was in Mr. Berkovitch's testimony. In 23 out of 24 cases when they met resistance, they withdrew the offending clause.

And my judgment is that that is exactly what will happen if Congress makes a clear-cut law so that there is no competitive disadvantage and everybody knows exactly where we stand.

Mr. BATCH. That is what we isolate as the real risk question. And we believe it to be a political question.

Mr. ROSENTHAL. It is a judgment call which we will just have to make.

Mr. BATCH. I would feel, though, just from my own personal judgment, that there is quite a difference between that six-pointed star issue, which was an area of confusion. We have never seen a clear discriminatory clause in a letter of credit. We have not even seen the six-pointed star at my bank.

But I think that that could be corrected on the Arab side much more readily than what they consider the economic provisions of the boycott.

Mr. DRINAN. Mr. Chairman, if I might, I would like to reclaim some of my time.

What do you mean by saying that you do not see a discriminatory thing? In all of the letters of credit there is a declaration, according to Mr. Berkovitch's testimony, that you cannot use an Israel-owned vessel or aircraft. And that is not discriminatory?

Mr. BATCH. We are talking about discriminatory in the sense of 369.2 of the regulation. We are talking about the prohibitive clauses, not the ones that are reportable. You are using it in a broader sense.

Mr. DRINAN. This is simply obvious and open discrimination against Israel.

Mr. BATCH. It may be economic discrimination.

Mr. DRINAN. It "may be!" And that is not discrimination!

Mr. BATCH. I am not saying that it is not discrimination.

Mr. DRINAN. Then what do you mean by saying that you have never seen a discriminatory phrase?

Mr. BATCH. We have never seen a clause in a letter of credit that discriminated against a U.S. person or firm on the grounds of race, creed, color, sex, or national origin. That is precisely what I mean by "discrimination."

Mr. DRINAN. But you have seen plenty of other discriminatory phrases. Let me conclude by asking this. There are a few banks, I guess, that have risen above this and who have said they are not going to participate. At least that is the testimony that we got earlier.

In banking circles, do people discuss this and say, "Why can't we all rise above this and just set it aside?" Mr. Berkovitch says, without any evidence whatsoever, that all of our trade routes in the Middle East would crumble. But I am not sure that that is going to happen if all of the other things are true—that they have to come here, and there is nowhere else to go.

I wonder if you have discussed this as much in banking circles as we have discussed it in the Congress over the past year.

Mr. BATCH. We have discussed the legal aspects of the regulations and the law.

Mr. DRINAN. But never the moral aspects. You don't care about morality?

Mr. BATCH. No; we are not talking about moral issues here. You are really asking if the banks get together and discuss what they will do about this boycott clause. That is an antitrust situation.

Mr. DRINAN. But you just stay with the legal aspect. If it is legal, then it is OK. You don't care about morality.

Mr. BATCH. That is precisely my job.

Mr. DRINAN. Thank you very much, Mr. Chairman.

Mr. ROSENTHAL. The subcommittee stands adjourned.

[Whereupon, at 12:25 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

EFFECTIVENESS OF FEDERAL AGENCIES' ENFORCEMENT OF LAWS AND POLICIES AGAINST COMPLIANCE, BY BANKS AND OTHER U.S. FIRMS, WITH THE ARAB BOYCOTT

WEDNESDAY, JUNE 9, 1976

HOUSE OF REPRESENTATIVES,
COMMERCE, CONSUMER,
AND MONETARY AFFAIRS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington D.C.

The subcommittee met, pursuant to notice, at 9:45 a.m., in room 2203, Rayburn House Office Building, Hon. Benjamin S. Rosenthal (chairman of the subcommittee) presiding.

Present: Representatives Benjamin S. Rosenthal and Robert F. Drinan.

Also present: Peter S. Barash, staff director; Robert H. Dugger, economist; Ronald A. Klempner, counsel; Doris Faye Taylor, clerk; and Henry C. Ruempler, minority professional staff, Committee on Government Operations.

Mr. ROSENTHAL. The subcommittee will be in order.

We continue our examination of the response of the Federal regulatory agencies to the situation concerning the Arab blacklisting and boycotting of American companies.

We are particularly honored this morning to have with us Mr. Roderick Hills, Chairman of the Securities and Exchange Commission. He will be followed by a representative of the Federal Reserve Board.

Mr. Chairman, we wrote to you some time ago and you responded in a very thoughtful and all-inclusive 14-page letter. It was a very erudite and lucid explanation of your position.

Do you have a prepared statement?

STATEMENT OF RODERICK HILLS, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION

Mr. HILLS. Mr. Chairman, I was merely going to highlight three or four points of that letter for the committee's use. But I am perfectly prepared to begin the questioning.

Mr. ROSENTHAL. It would be useful if you gave those points and then we will begin the questioning.

And without objection, we will include your entire letter in the record.

[The letter referred to follows:]

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., June 1, 1976.

HON. BENJAMIN S. ROSENTHAL,
Chairman, Commerce, Consumer and Monetary Affairs, Subcommittee of the Committee on Government Operations, Rayburn House Office Building, Washington, D.C.

DEAR CHAIRMAN ROSENTHAL: This is in reply to your letter, dated April 13, 1976, requesting the Commission's response to six questions dealing with the matter of corporate participation in boycotts. Although your letter does not specifically make reference to participation in the so-called "Arab boycott" of firms doing business with Israel, each of the six questions relates to activity of that type. The Commission believes that the issues presented by the Arab boycott are serious matters, and it strongly condemns participation in such boycotts by American citizens and enterprises. Since this activity has surfaced, the Commission and its staff have taken an active interest in the matter and will continue to do so in the future. In this regard, the Commission intends to exercise fully its statutory powers in dealing with issues relating to the Arab boycott.

Set forth below are the Commission's responses to the subcommittee's questions.

Question 1. Is the SEC aware of any instances where a registered company has refused to do business with another company or person on the basis of race, religion, sex or national background or because such other company or person does business in or is associated with a foreign country friendly to the United States?[1]

Indicate whether the SEC has conducted any study, review or investigation to determine whether such practices have occurred since 1973.

A. THE COMMISSION'S ACTIVITIES GENERALLY

Since 1975 when information regarding the Arab boycott and possible American corporate involvement therein became widely publicized, the Commission has taken a number of actions with a view to understanding the issues involved and to analyzing their nexus with the federal securities laws. In this connection, former Chairman Ray Garrett, Jr. requested that the National Association of Securities Dealers, Inc. ("NASD") conduct an investigation into allegations concerning the exclusion of certain American underwriters from underwriting syndicates on the basis that such firms were either "Jewish" or that they had provided financial services to the state of Israel.[2] Chairman Garrett also met with various representatives of Jewish groups in 1975 for the purpose of obtaining information regarding the Arab boycott.

In Securities Exchange Act Release No. 11860, issued on November 20, 1975,[3] the Commission publicly announced its view that discriminatory practices engaged in by regulated entities would not be tolerated. In pertinent part, that Release stated: "The Commission wishes to express its support for President Ford's strong statement reiterating the United States' policy of opposition to discriminatory practices against United States citizens or businesses resulting from foreign boycotts. Any such discriminatory practices in areas of commerce subject to regulation by the Commission will be viewed as a most serious matter."

The Release concluded with a warning to securities issuers, as well as to those who effect the sale of securities, that the Commission and the securities industry's self-regulatory organizations "are prepared to exercise their full authority to proscribe participation in such discriminatory activities."

Since the issuance of Release No. 11860, the Commission's staff has undertaken a series of activities in regard to Arab boycott matters. Contacts were established with certain agencies and groups for the purpose of gathering information as well as soliciting their opinions and viewpoints on the matter. In-

[1] In responding to this question, we have assumed that the question does not contemplate "traditional" types of employment discrimination such as on the basis of race, religion, sex, or national origin. The Commission's rules require, in certain documents, disclosure of material litigation pending against a registrant and, therefore, such fittings frequently make reference to employment discrimination suits which have been filed against the registrant.

[2] A more complete description of this investigation by the NASD is set forth infra.

[3] A copy of this Release is attached hereto.

cluded among these groups were members of the staff of a New York legislative subcommittee which has conducted hearings pursuant to a recently enacted New York law which makes unlawful, inter alia, participation in certain types of boycotts.

In March 1976, the Commission convened a meeting of various officials of several agencies and departments of the federal government for the purpose of determining the activities of other branches of the government which were relevant to the Arab boycott and to exchange views on the problem. Representatives from the Departments of Justice, State, Commerce and the Treasury, as well as from the White House and the Commission's staff, attended this meeting.

Despite the difficulty in obtaining reliable information concerning the Arab boycott and in understanding the complex issues involved therein, the Commission's fact-gathering activities have produced one enforcement action and have resulted in the initiation of several informal inquiries by the Division of Enforcement into matters related to the Arab boycott, as set forth below.

B. INFORMAL INQUIRIES AND ENFORCEMENT ACTION

As a result of the Commission's activities in gathering information regarding the Arab boycott, which are set forth above, the Division of Enforcement has begun several informal inquiries in order to determine whether certain companies violated the federal securities laws by failing to disclose to their shareholders certain corporate activities involving Arab boycott matters. These inquiries, which are presently ongoing and therefore non-public, include companies which may have used improper means to remove their names from an Arab boycott blacklist. Further, one inquiry concerns allegations that a company refused to do business with a privately held American firm on the basis that the principals of the latter firm might have been Jewish. The above informal inquiries have not produced definitive determinations to date. However, the Commission intends to pursue these and other inquiries vigorously for any evidence of violations of the federal securities laws.

One Commission investigation, while not primarily directed at the matters raised in Question 1, culminated in the filing of an enforcement action which included certain allegations related to the Arab boycott. On May 10, 1976, the Commission filed a complaint in the United States District Court for the District of Columbia against General Tire and Rubber Company and its President, M. G. O'Neil.[4] The complaint alleges various violations of the federal securities laws as the result of the making by General Tire of millions of dollars of improper and illegal payments and falsification of its books and records as well as the filing of materially false and misleading reports with the Commission. In that context, the complaint recites that General Tire engaged in efforts to buy its way off a boycott list that had effectively precluded the company from doing business in Arab countries. Without admitting or denying the allegations in the Commission's complaint, the company consented to the entry of a permanent order of injunction against future violations of the federal securities laws. Moreover, it consented, among other relief, to the establishment of a special committee to conduct a thorough inquiry and report to the court, the Commission, and the shareholders. This report, which we will transmit to the Subcommittee as soon as it is filed with the Commission, may shed additional light on General Tire's participation in the Arab boycott.

C. DISCLOSURES IN COMMISSION FILINGS

In at least three instances, registrants have disclosed matters pertaining to the Arab boycott in filings with the Commission. In a registration statement on Form S–7 (File No. 2–55175), Santa Fe International Corporation disclosed that, since the 1950's, it has been required, as a condition to doing business in a number of Arab countries, to comply with "local legal requirements imposed pursuant to the Arab Boycott of Israel." The company stated that it does not believe it has violated any United States laws in connection with its operations in Arab countries, but that the company's business in such countries would be materially adversely affected if the Congress were to enact new legislation precluding compliance with such local legal requirements.

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[4] See Litigation Release No. 7386 May 10, 1976.

Hospital Corporation of America disclosed in a registration statement on Form S–7 (File No. 2–55678) that an employment discrimination suit was filed against it with the EEOC in 1975. The suit alleges that the company discriminated on the basis of religion in connection with its recruitment of persons for employment by a Saudi Arabian hospital which the company manages.

In another case, confidential treatment was granted under Securities Act Rule 485, 17 C.F.R. 230.485, in August, 1974, to certain portions of a contract which was required to be filed with the Commission as an exhibit to a registration statement. Certain provisions in that contract appear, in retrospect, to require the registrant to restrict its business dealings with other persons on a discriminatory basis. However, a review of the 53 requests for confidential treatment under the Securities Act and the Securities Exchange Act granted during the period July 1, 1974 to May 31, 1975, revealed that this was the only instance in which confidential treatment was granted to information which appeared to indicate participation in such discriminatory activities. Nevertheless, in light of the foregoing, the procedures for review of confidential treatment requests have been revised and centralized, in order to permit specific consideration of any requests involving such restrictive provisions.

In addition, a number of registered companies have received shareholder proposals in which particular individuals seek to present at the corporate annual meeting resolutions opposing company participation in the Arab boycott or requiring a report concerning such participation. In some instances, the companies involved desire to omit these proposals from management's proxy solicitation and have requested that the Commission's staff indicate whether it would recommend to the Commission enforcement action based on a violation of Rule 14a–8, 17 C.F.R. 240.14a–8, if such an omission is made. Generally, after examining the facts involved, the staff has indicated that the percentage of company business in Arab countries is so small that the matter is insignificant and may be omitted from the proxy material. See Rule 14a–8(c)(2)(ii). In one instance however, where the percentages of sales, earnings, and assets in Arab countries and Israel were all not less than 7.9 percent, the staff declined to indicate that it would not oppose omission of the proposal. We do not consider there shareholder proposals to constitute evidence that the corporations involved have actually engaged in discriminatory conduct; hence, we have not included any further description of such proposals herein.

D. FUTURE ACTIVITIES

Apart from the matters set forth above, the Commission does not have reliable information tending to indicate that a registered company has refused to do business with another company or person on the basis of race, religion, sex or national background or because such other company or person does business in, or is associated with, a foreign country friendly to the United States, or other information indicating improper or illegal participation in matters pertaining to the Arab boycott. The Commission intends, however, to continue to scrutinize carefully instances where there is any indication that evidence to this effect exists as to a company subject to its regulation.

Question 2. If a customer or group of customers in a foreign country has conditioned the purchase of a registered company's goods or services on a statement that such company (i) has not or will not do business in another country friendly to the United States or (ii) will not employ or do business with a person on the basis of race, religion, sex or national background, should the registered company report such requirement or condition in a current report on Form 8–K, pursuant to Item 13 of "Information to be included in the Report"; in its Annual Report on Form 10–K in response to Item 1(b)(1) and (2), (d) and (4) of Part 1 of the Form; or in comparable items of registration statements required to be filed with the SEC?

Answer. In the situation which you posit—that is, where "a customer or group of customers in a foreign country has conditioned the purchase of a registered company's goods or services on a statement that such company (i) has not or will not do business in another country friendly to the United States or (ii) will not employ or do business with a person on the basis of race, religion, sex or national background," disclosure in reports or registration statements filed with the Commission would be required only if, and to the extent that, this informa-

tion is "material" to investors.[5] A determination as to the "materiality" of the information in question necessarily would depend upon all the facts and circumstances of each particular case. For example, if compliance with the requirement or condition described in your question would have a material adverse effect upon the income, assets, or profits of the registrant, disclosure of the relevant facts would be required. Similarly, if breach of the requirement or condition, or disclosure of the fact that the registrant had agreed to such condition, would result in a material adverse effect upon the registrant's business, disclosure would also be required.

Question 3. Should a registered company which engages in material operations in foreign countries be required to report activities which have been prohibited or discouraged by the Export Administration of the Department of Commerce (e.g., Part 369 "Restrictive Trade Practices on Boycotts" of Export Administration Regulations) or by any other governmental agency with jurisdiction or control over the affairs of the registrant pursuant to Item 1(d) and (e) of Part 1 of the Annual Report on Form 10–K, and also report the risks attendant thereto?

Answer. As stated above, whether particular corporate conduct, which may be in violation of federal or state law or policies, and the risks attendant thereto is of importance to investors—that is, whether it is "material"—necessarily would depend upon the facts and circumstances involved in each case. Thus, disclosure by publicly-held corporations of every violation of law which occurs in the course of their business operations is not necessarily required under the federal securities laws. To the extent material to the business of a particular registrant, however, disclosure of such conduct would be required. In addition, any material litigation, including law enforcement actions taken by other governmental agencies, resulting from such activities would be required to be disclosed. Whether the corporate activities described in your question, and the risks attendant thereto, should be required to be disclosed regardless of materiality to investors, or whether such activities should be prohibited outright is, of course, a matter for the Congress to determine.

Question 4. Is the SEC aware of any attempts to preclude any person or entity from acting as an underwriter in connection with the issuance of securities as a result of race, religion, sex or national background of such person or any employee, partner or associate of such entity or because such person or entity (or an employee, partner or associate thereof) does business in or is associated with a foreign country friendly to the United States

Indicate whether the SEC has conducted any study, review or investigation to determine whether such practices or attempts have occurred since 1973.

A. EVIDENCE OF EXCLUSIONARY UNDERWRITING

The only attempts of which the Commission is aware to exclude any person or entity from an underwriting on the basis of any of the factors listed[6] have oc-

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[5] Rule 405(*l*) under the Securities Act of 1933 provides: "The term 'material,' when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing the security registered."

Rule 408 provides: "In addition to the information expressly required to be included in a registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading."

Rule 12b–20 under the Securities Exchange Act of 1934 is worded substantially the same as Rule 408 above.

Rule 14a–9(a) provides: "No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading."

Further, Guide 27 of the Guides to the Preparation and Filing of Registration Statements, which relates to disclosure in registration statements under the Securities Act of customers, competitors and the nature of the market, is relevant. The name of the customer or customers and "other material facts with respect to their relationship" are required to be disclosed where a single customer or very few customers account for a substantial part of the business of the registrant and their loss would have a materially adverse effect on the registrant.

[6] The Commission's attention has been focused primarily on possible discriminatory practices resulting from the Arab boycott and not on the other possible discriminatory practices referred to in this question, such as exclusion from an underwriting on the basis of sex. The Commission is not, however, aware of any attempts to exclude persons or entities from underwriting syndicates on the basis of any of the other factors referred to in this question.

curred in connection with offerings of securities outside the United States which were not required to be registered with the Commission. The evidence indicating such attempts was developed in the course of an investigation into the Arab boycott, undertaken at the Commission's request, by the NASD. In its report of this investigation to the Commission, the NASD presented evidence of two successful attempts, and of indications of other unsuccessful attempts, to exclude certain investment banking firms from participation in offshore offerings of securities.

As a result of this investigation, the NASD has taken disciplinary action against two firms, Blyth Eastman Dillon & Co., Inc. and Dillon, Read & Co., Inc., on the basis of their cooperation with Arab-related firms in precluding other firms from certain offshore underwritings. The NASD Report also uncovered some evidence, detailed therein, suggesting that one or two similar, isolated attempts had occurred in the United States, but reported that such attempts had been resisted. The Commission is not aware of any successful attempts to implement such discriminatory practices in connection with financing syndicates organized to offer securities registered with the Commission.

The results of the NASD's investigation and its subsequent disciplinary action are described in detail in the following items, copies of which are appended to this letter: (i) the NASD Report (December 26, 1975), (ii) a letter dated April 9, 1976 from Chairman Roderick M. Hills to Frank J. Wilson, Senior Vice President of the NASD, (iii) a letter dated April 21, 1976 from Gordon S. Macklin, President of the NASD, to Chairman Hills, and (iv) a letter dated May 4, 1976 from Chairman Hills to Gordon S. Macklin.

B. STUDIES CONCERNING EXCLUSIONARY UNDERWRITING

As a consequence of newspaper reports of alleged Arab boycott pressures in early 1975, the Commission immediately discussed those reports with several members of the U.S. underwriting community and with the NASD. The Commission was persuaded that there had been no cases of exclusion of firms on a discriminatory basis from underwritings of securities offered in the United States and required to be registered with the Commission; there were, however, some indications of questionable practices abroad, and accordingly the Commission requested the NASD to monitor the situation both at home and abroad.

In particular, in July 1975, the Commission's staff studied the composition of underwriting syndicates during the previous year, and identified four offshore offerings as cases in which discriminatory practices, if they existed, were likely to have occurred. Those offerings were referred to the NASD and, at the Commission's request, were included in the offerings which were the focus of the NASD's investigation. As noted, the NASD has subsequently taken disciplinary action with respect to two of those offerings. The NASD also undertook a review of all offerings between June 1974 and June 1975 which were required to be registered with the Commission and filed with the NASD, and reported that no indications of boycott activity were discerned. The Commission has closely reviewed the NASD Report, remained in close contact with the NASD on that subject, and urged the NASD to continue its monitoring program. In addition, as previously described, at the Commission's request representatives of other government agencies met with the Commission on March 12, 1976, to discuss the prevalence of Arab boycott pressures and general approaches to the problem.

Question 5. Is it the policy of the SEC to make effective a prospectus where the practices referred to in Question 4 have occurred?[7]

Answer. As we indicated in our response to Question 4 above, the Commission is not aware of any instances in which underwriters have been excluded, on a discriminatory basis, from participation in offerings of securities registered with the Commission. Indeed, the United States investment banking community appears to have resisted successfully all attempts to implement such discriminatory practices in connection with offerings of securities in United States. Should such

[7] It should be noted that the Commission does not, strictly speaking, "make effective" prospectuses or registration statements under the Securities Act of 1933. Pursuant to Section 8(a) of the Act, 15 U.S.C. 77h(a), a registration statement becomes effective automatically 20 days after its filing.

The Commission may, however, in its discretion, accelerate the effective date of a registration statement in conformity with certain standards set forth in Section 8(a). Likewise, the Commission may prevent a registration statement from becoming effective, or suspend a statement already effective, pursuant to Section 8(d) of the Act if it finds the statement to contain materially false or misleading statements.

a situation arise, however, the Commission and the securities industry self-regulatory organizations would act promptly to proscribe participation in such discriminatory activities and to take appropriate enforcement action against those involved. In Securities Exchange Act Release No. 11860 (November 20, 1975), a copy of which is enclosed, the Commission made its intentions to take such action clear, as did the NASD in the disciplinary proceeding described above.

In light of the foregoing, the Commission has not, and does not expect to, face the question of whether a registration statement should become effective where any person has been excluded from participation in the underwriting syndicate on a discriminatory basis. The Commission would view any indications of exclusionary practices in connection with a registered offering as an extremely serious matter, and, if investigation revealed that such practices had in fact occurred, enforcement action against those responsible would unquestionably follow. Whether the Commission would also find it appropriate to suspend or block the effectiveness of the registration statement is, however, a question which cannot be answered absent a specific fact situation.

Question 6. Does the SEC consider any of the business practices referred to in Questions 1, 2, 3 and 4 to be (i) in violation of "principles of good business practice" in the conduct of a member organization's business affairs as referred to in Rule 401 of the Rules and Policies Administered by the New York Stock Exchange, Inc., (ii) in violation of the "high standards of commercial honor and integrity" among its member organizations as referred to in Section 2 of Article I of the Constitution of the New York Stock Exchange, Inc., and (iii) an unjust and inequitable principle of trade and business in contravention of Section 2 of Article I of the Constitution of the New York Stock Exchange, Inc.?

Answer. With respect to the business practices referred to in Question 4,[8] the Commission has stated: "The formation by investment banking firms, or their affiliates, subject to regulation by the Commission, of syndicates to distribute securities in the United States or abroad, the composition of which reflects [attempts to implement discriminatory practices], would be inconsistent with just and equitable principles of trade, and may raise questions as to the fairness of the markets in which such practices occur." Securities Exchange Act Release No. 11860 (Nov. 20, 1975).

Therefore, the Commission believes that attempts to implement discriminatory practices as described above would be inconsistent with the "high standards of commercial honor and integrity" and "just and equitable principles of trade and business" referred to in Section 2 of Article I of the Constitution of the New York Stock Exchange.

It should also be noted that Section 6(b)(5) of the Securities Exchange Act of 1934 requires that the rules of a registered national securities exchange, such as the New York Stock Exchange be designed to promote just and equitable principles of trade, and that Section 6 of Article XIV of the Constitution of the New York Stock Exchange provides, in essence, for disciplinary action by the Exchange against any member organization which engages in conduct inconsistent with just and equitable principles of trade.

Most members of the New York Stock Exchange which underwrite offerings of securities are also members of the NASD.[9] While the rules of the Exchange referred to above are broad enough to cover all aspects of a member's securities business, it has traditionally deferred to NASD regulation of underwriting activities, which involve predominantly "over-the-counter" transactions rather than exchange transactions. For example, as described in our response to Question 4, the NASD recently took disciplinary action against two of its members which are also members of the Exchange. That disciplinary action was based on violations of Section 1 of Article III of the NASD Rules of Fair Practice, which also requires NASD members to observe high standards of commercial honor and just and equitable principles of trade.[10]

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[8] The rules of the New York Stock Exchange cited in this question apply only to Exchange member organizations and their associated persons. Accordingly, those rules would not appear to cover the business practices referred to in Questions 1, 2 and 3, which relate to certain issuers of securities rather than to NYSE members, with the exception of certain Exchange members which are themselves publicly held companies.

[9] Those which are not required to submit to regulation comparable to the NASD's directly by the Commission.

[10] Section 15A(b)(6) of the Securities Exchange Act of 1934 requires, among other things, that a national securities association must have rules which "are not designed to permit unfair discrimination between customers, issuers brokers, or dealers."

With respect to New York Stock Exchange Rule 401, the Commission has not specifically addressed the question of whether the practices referred to in Question 4 would be a violation of that rule. That rule, when read together with the complex of rules and interpretations which follow it, appears designed to ensure adequate protection of a member's customers and does not explicitly refer to fair dealing among members. In light of the fact that there would be ample basis, in connection with the practices referred to in Question 4, for disciplinary action under other Exchange rules as described above, the Commission does not at this point see a need to take a position as to whether the conduct referred to in Question 4 would constitute a violation of Rule 401.

I hope that the foregoing information will be of use to the Subcommittee. Please feel free to contact me if you believe it would be helpful for appropriate members of the Commission's staff to meet with the staff of the Subcommittee to discuss the foregoing in greater detail, or if the Commission can in any other way be of further assistance.

Sincerely yours,

RODERICK M. HILLS, *Chairman.*

[The attachments referred to may be found in app. 3, p. 97.]

Mr. HILLS. Mr. Chairman, if I may, I should like to summarize three or four of the points that we tried to highlight in our letter to you on June 1.

The Securities and Exchange Commission's efforts to define the extent of its authority and responsibility with respect to the so-called Arab boycott was initially evidenced by our policy statement of November 20, 1975. The statement, issued in conjunction with an executive branch effort, specifically supported the President's strong expression of the U.S. policy of opposition to discriminatory practices against U.S. citizens or business resulting from foreign boycotts. "Any such discriminatory practices in areas of commerce subject to regulation by the Commission," we stated, "will be viewed as a most serious matter."

There have been, I think, a significant number of steps taken in connection with that policy statement. As the chairman knows, the Commission's authority in this area is largely directed toward insuring that shareholders receive material information concerning the companies in which they have invested. In each instance, the need to disclose participation in a boycott in Commission filings depends upon whether or not, from the standpoint of the investor, something of a material nature has happened. The fact that, in some circumstances, disclosure of boycott participation may not be required by the Commission, of course, does not mean that the Commission is condoning it, or that the Commission believes that it is a practice that should be continued. It is instead, a question of whether the subject matter falls within our jurisdiction.

The difficulty for us of knowing how to respond to boycott activity is compounded by the fact that, at the present time, it is sometimes difficult to know whether a given boycott activity is violative of Federal law or not. There is still considerable uncertainty as to what the relevance of the antitrust laws may be and what other kinds of Federal laws may be violated by the kind of behavior that is being caused by the boycott. Indeed, from my experience, both at the Commission and in the White House before coming to the Commission, we found considerable uncertainty as to precisely what kind of conduct was going on. We will be handicapped for some time, I think, until we have a base of information, to give us some idea as to how various

types of companies and various types of commerce are reacting to participation in the so-called boycott.

The question, of course, is not solely whether the conduct is legal or illegal. That is not necessarily dispositive of our jurisdiction. The question is whether or not, legal or illegal, it is a matter of importance to investors. If the conduct is not a material matter from the standpoint of investor protection, then the issue of whether it should be disclosed, and the issue of whether it should be prohibited, are questions that Congress, in conjunction with the executive branch, has to decide, through legislation, if necessary. It is without our jurisdiction to do so.

There is another area of our responsibility which is of significance, however—that is our oversight authority over the broker-dealers in the securities industry, either through the industry self-regulatory organizations to which such brokers belong, such as the stock exchanges or the National Association of Securities Dealers. In this regard, we wrote a letter to the NASD sometime in November of last year telling them that we had learned of allegations that certain Americans underwriters had been excluded from underwriting syndicates on the basis that such firms were either "Jewish" or that they had provided financial services to the State of Israel.

These allegations, involved offshore offerings where subsidiaries or companies related to American broker-dealers were participating in European financial arrangements.

In response to our request, the NASD did do a comprehensive investigation. In its report to us—and I believe the committee has a copy of that report—they presented evidence of two cases in which the boycott was sucessful in breaking up a syndicate or forcing out of a syndicate firms that were blacklisted by the so-called Arab boycott.

They also gave us indications of other unsuccessful attempts to exclude certain investment banking firms from participation in offshore investment activities.

The NASD to date has taken disciplinary action against two firms involved in these activities, and has made it clear to other firms that it will not tolerate a continuation of the practice.

Mr. Chairman, as of now, it is our belief, although we obviously have no definitive evidence, that there are no other efforts underway to try to boycott securities firms because of their activities involving Israel. It is a matter, however, which we are following closely and that, as a matter of our normal oversight, have reason to look into from time to time.

We have made it clear, both privately and in our public statements to the various stock exchanges and to the other self-regulatory organizations, that any broker-dealer who chooses to engage in an underwriting when there are aspects requiring acquiescence in any kind of discriminatory practice will be subject to disciplinary action by the exchanges, the National Association of Securities Dealers, or the Commission, which has the authority to bring direct action against broker-dealers.

In order that we might have a better idea as a Commission as to what types of potentially illegal activities could be going on and to

better acquaint our staff with the activities of other branches of government, we held a meeting at the Commission in March, at my request, of officials of several agencies and departments of the Federal Government for the purpose of finding out precisely what was going on. We had representatives of the Justice Department, the State Department, the Commerce Department, the Treasury Department, and a White House representative.

That initial meeting has been helpful to its participants on a couple of occasions so far in trying to establish an interchange of information and to assist us in pursuing questions relating to the Arab boycott.

As we reported in our letter, the Commission has begun several informal inquiries in order to determine whether certain companies have violated the Federal securities' laws, or other laws in a context which may be material to stockholders, by failing to disclose to their shareholders the extent of their boycott-related activities. Because those inquiries are in the Division of Enforcement and are ongoing, they are not public at the present time. But they do include companies which may have used improper means to try to get off of the so-called blacklist.

One of our inquiries concerns allegations that a company refused to do business with a privately-held American firm on the basis that the principals of that firm might have been Jewish.

One Commission investigation, while not directed at participation in the Arab boycott, culminated in an enforcement action which included allegations related to the boycott; namely, that a company paid undisclosed bribes for the purpose of removing the company's name from the boycott list.

Mr. Chairman, that essentially concludes my remarks. I should say also that we have had before the Commission a number of shareholder requests that certain information related to the boycott be included in proxy statements, or that questions be included in proxy statements asking corporations to disclose more about their alleged participation in the boycott. I believe that, as of last week sometime, we had 55 such requests. In 23 of those requests, we were asked to render informal advice whether the request involved a significant matter or not, and thus was required to be included in proxy materials under our rules.

In 16 of these instances, the staff rendered no-action advice. This essentially means that, as a result of their information and cursory consideration, it did not appear to them that the matter was significant; that is, not enough business was involved to require inclusion.

In seven of those instances, the staff declined to issue no-action advice. This meant, basically, that the staff told the companies involved, "you proceed at your own risk if you omit these proposals, and we will not provide you any comfort."

In 22 of these matters, the proposals were not filed in a timely fashion. I think in two matters the people who were asking for the information to be included could not show that they were owners of stock in the company. And I believe eight have been withdrawn.

I will be more than pleased to answer any questions.

Mr. ROSENTHAL. On pages 3 and 4 of your letter, you state that there are ongoing inquiries of companies removing themselves from the

boycott list and engaged in other boycott activities. From press reports and other areas, we have become advised that the names of such companies as General Motors, the Irving Trust Co., Texaco, Scott Paper, Bulova, and World Airways have been bandied about and reported as companies either removing or attempting to remove themselves from the so-called blacklist. Can you tell us whether or not these companies are included in your investigation and what the nature of the Commission's efforts has been in this regard?

Mr. HILLS. Mr. Chairman, if I may, since it is our practice not to comment upon an enforcement proceeding which is underway, I would rather not answer that. I can respond by saying that that kind of information generically would be the grounds for some form of Commission inquiry.

We presently have, I believe, nine investigations underway in one form or another. If you look at the history of the Commission in the area of questionable foreign payments, you will see that we began by going into a couple of companies in depth, trying to get some notion as to what the practices were, and then expanding its activities from time-to-time. I have no reason to know that the problem here is as extensive as that; but, typically, the Division of Enforcement begins in this fashion.

Mr. ROSENTHAL. On page 5 of the letter, you state that registrants sometimes disclose boycott matters in filings before the Commission. Does the Commission scrutinize all filings for report of boycott activities?

Mr. HILLS. We have, I think, over 10,000 companies that file with us. We are interested in the subject. Our people do report to us on it. But, I cannot say that somebody may not have missed it in some filing. But we are attempting, in terms of the work of the Division of Enforcement and Corporation Finance, to determine what kind of information we have on the subject.

Mr. ROSENTHAL. I want to be absolutely clear for the record on this. Do I understand you to say that you review only the filings of large companies? Or do you review all filings for this?

Mr. HILLS. We review all filings. I am merely commenting that we have thousands of filings and that it is conceivable that someone would read it and not pick it out as a matter of significance.

We are, I should say, attempting as an overall Commission effort to make our indexing more efficient. We are trying to put our material on microfiche and use computers so that we can collect this information at an earlier date.

Mr. ROSENTHAL. How many companies are presently registered with the Securities and Exchange Commission.

Mr. HILLS. There are roughly 10,000 that are required to make filings with us of one form or another.

Mr. ROSENTHAL. Do you have an opinion, even if a speculative one, what percentage of those companies are cooperating with the Arab boycott?

Mr. HILLS. Mr. Chairman, I do not.

Mr. ROSENTHAL. Have any members of the Commission staff or others rendered an opinion to you as to the percentage of companies which are cooperating?

Mr. HILLS. No; they have not. I think that, as the chairman may know, I was involved in the same problem at my previous job in the White House. I think that I have perhaps, at least at this stage of our investigation, as much information about business activities in this area as anyone at the Commission. I think it is impossible at this date to quantify the participation of companies. The Commerce Department probably has better information in their files than anyone else.

Mr. ROSENTHAL. Other than the meeting which you said took place in your office, or at least within the SEC, at your request, what procedures exist among the responsible Government agencies to keep one another informed on the boycott issue?

Mr. HILLS. I do not know what procedure is going on in the executive branch. We, of course, are an independent agency. At my request, certain agencies and departments were willing to come over and tell us at that time what each was doing.

We have a report of that meeting which we will be pleased to provide your staff.

Mr. ROSENTHAL. We would like to include that in the record.

[The information referred to follows:]

MEMORANDUM OF MEETING HELD ON MARCH 12, 1976, REGARDING THE ARAB BOYCOTT

On March 12, 1976, Chairman Hills convened a meeting of representatives from various federal agencies and departments for the purpose of discussing matters pertaining to the Arab Boycott. Although no verbatim transcript of the meeting is in existence, contemporaneous handwritten notes were made by a staff member from the Division of Enforcement. The following description of the meeting is a distillation from those notes.

In attendance at the meeting were:

Securities and Exchange Commission.—Chairman Roderick Hills, Commissioner Philip Loomis, Commissioner John Evans, Commissioner Irving Pollack, Stanley Sporkin, Harvey Pitt, Lee Pickard, Richard Rowe, Frank Snodgrass, Neal McCoy, Ralph Ferrara, Theodore Levine, Edward Herlihy, Lloyd Feller, Thomas Kaplan, Rose Jaffin, and Charles Landy.

Department of State.—Sid Sober, Keith Huffman, and Robert Oakley.

Department of Justice.—Nino Scalia, Doug Rosenthal, and David Marblestone.

Department of Treasury.—Jerry Newman, Jacques Gorlin, and Russell Mank.

Department of Commerce.—James Baker, J. T. Smith, and Kent Knowles.

White House Staff.—Bobbie Kilberg.

Chairman Hills opened the meeting by explaining that the meeting had been called for the purpose of educating the Commissioners and the staff to issues and problems regarding the Boycott. Chairman Hills then called upon Bobbie Kilberg to discuss what action had been taken by other federal departments concerning this matter.

Bobbie Kilberg recited President Ford's concern over reports of discrimination in securities offerings and that he had asked Chairman Hills, while he was a member of the White House staff, what action the White House could take on this matter. Kilberg explained that a task force had been created by Chairman Hills and related its efforts between June and November 1975. Kilberg discussed President Ford's statement of November 20, 1975 and then called upon others in the room to describe what their offices were doing regarding the Boycott.

Jim Baker stated that Commerce was referring any trade offers which might involve discrimination or antitrust violations to the State Department and to the Justice Department. He observed that President Ford had considered and rejected a requirement of prospective disclosure and he also pointed out that neither Secretary Morton or Secretary Richardson believed that Commerce had the power to require disclosure of Boycott matters.

Sidney Sober, the principal State Department representative, related that State had called attention to the few, isolated cases where there had been, in connection with a commercial transaction, any reference made to the religion of an American firm's officers or directors. He stated that State had had success in handling these cases on a diplomatic level with the Arab countries involved. He observed that State sees a relationship between Boycott matters and peace in the Middle East and that the United States must remain anti-boycott while strengthening its relations with Arab Countries. He stated that, in his view, the Arab countries would be less inclined to ease Boycott restrictions as the amount of publicity about the Boycott increased.

Jerry Newman of Treasury described how the Federal Reserve Board had cautioned commercial banks from participating in the Boycott but he did not indicate what if any other steps had been taken by Treasury.

Nino Scalia from Justice described the Bechtel case and Doug Rosenthal stated that this is not the last case in this area which Justice would bring. Rosenthal explained that Justice was monitoring matters at Commerce and that it was conducting an active investigation in the area. He also noted that there remained great uncertainty over the applicability of antitrust laws to Boycott related matters.

Bob Oakley of the National Security Council stated that NSC was in a holding action until the impact of the Boycott could be assessed.

There followed a general discussion among those present with Chairman Hills observing that, in the context of the federal securities laws, participation in the Arab Boycott might involve potential legal liabilities arising from violations of the antitrust laws, export laws (including the loss of an export license) and other comparable provisions. The meeting commenced at 2:15 p.m. and concluded at approximately 3:30 p.m.

Mr. ROSENTHAL On page 6 of your letter, you mention that a number of companies have asked the SEC for clearance, no-action letters, in removing from management's proxy solicitation stockholder's proposals opposing company participation in the Arab boycott. Can you tell us what companies made those requests for clearance and what they alleged as their reasons for wanting to remove these antiboycott proposals?

Mr. HILLS. Yes. Those are public filings. We can compile a report for you. That was what I was referring to earlier. We have had 55 such requests. We have actually considered, in an informal advisory capacity, only 23 of those. Twenty-two of them were clearly late in their filing; a couple of them were not stockholders; eight of them were withdrawn.

Of the 23 that our staff has looked at, 16 of them, the staff informally decided, could have a no-action letter. On seven of them, the staff declined to offer any no-action advice.

We will be pleased to provide you with that.

Mr. ROSENTHAL. Can you furnish for the record the list of the 55 companies that sought those no-action letters?

Mr. HILLS. Yes, sir.

[The information referred to follows:]

LIST OF DIVISION LETTERS ON ARAB BOYCOTT PROPOSAL

DIVISION DECLINED TO ISSUE A NO-ACTION LETTER

Company:	*Date of letter*
Amax, Inc	Feb. 2, 1976.
Boeing Co	Mar. 8, 1976.
Fruehauf Corp	Mar. 15, 1976.
Occidental Petroleum Corp	Apr. 15, 1976.
Raytheon Co	Mar. 23, 1976.
UOP, Inc	Mar. 9, 1976.
Upjohn Co	Mar. 16, 1976.

DIVISION ISSUED A NO-ACTION LETTER ON THE BASIS OF THE FOLLOWING REASONS

(a) *Not timely*	*Date of letter*
Airco, Inc	Feb. 24, 1976.
American Standard, Inc	Feb. 10, 1976.
American Airlines	Feb. 20, 1976.
Brown & Sharpe Manufacturing Co	Mar. 2, 1976.
Chrysler Corp	Feb. 23, 1976.
Colgate-Palmolive Co	Mar. 3, 1976.
Fairchild Camera and Instrument Corp	Jan. 27, 1976.
General Telephone and Electronics Corp	Jan. 22, 1976.
Georgia-Pacific Corp	Jan. 23, 1976.
Instrument Systems Corp	Jan. 29, 1976.
International Business Machines Corp	Feb. 6, 1976.
International Paper Co	Jan. 23, 1976.
International Telephone & Telegraph	Feb. 20, 1976.
Lehigh Portland Cement Co	Mar. 4, 1976.
Louisiana-Pacific Corp	Feb. 2, 1976.
National Distillers and Chemical Corp	Jan. 29, 1976.
National Steel Corp	Feb. 6, 1976.
Monsanto Co	Feb. 20, 1976.
RCA Corp	Feb. 17, 1976.
Research-Cottrell, Inc	Mar. 24, 1976.
Sunbeam Corp	May 20, 1976.
Weyerhaeuser Co	Feb. 18, 1976.

(b) *Not a Significant Matter*

Company:	*Date of letter*
Bell & Howell Co	Mar. 11, 1976.
Hecla Mining co	Feb. 24, 1976.
Chicago Pneumatic Tool Co	Mar. 19, 1976.
Phillips Petroleum Co	Mar. 5, 1976.
Libbey-Owens-Ford Co	Feb. 3, 1976.
Kysor Industrial Corp	May 20, 1976.
American Can Co	Mar. 3, 1976.
Great Atlantic & Pacific Tea Co., Inc	May 6, 1976.
Eastman Kodak Co	Mar. 11, 1976.
B. F. Goodrich Co	Mar. 10, 1976.
Eaton Corp	Do.
American Home Products Corp	Mar. 5, 1976.
Avon Products, Inc	Feb. 25, 1976.
Santa Fe Industries, Inc	Mar. 11, 1976.
Colt Industries, Inc	Mar. 5, 1976.
Copper Range Co	Mar. 10, 1976.

(c) *Not a Security Holder*

Curtiss-Wright Corp	Feb. 25, 1976.
Getty Oil Co	Apr. 1, 1976.

Withdrawn	*Date of letter*
ASARCO, Inc	Feb. 24, 1976.
American Brands, Inc	Feb. 18, 1976.
Atlantic Richfield Co	Mar. 1, 1976.
Carter-Wallace, Inc	May 11, 1976.
Southern Pacific Co	Feb. 18, 1976.
Tiger International, Inc	Mar. 15, 1976.
Union Electric Co	Feb. 25, 1976.
United States Gypsum Co	Mar. 1, 1976.

Mr. ROSENTHAL. It may be that there will be a difference of opinion between us and your staff as to whether the letters should have been issued.

Mr. HILLS. As I said earlier, of the 55 there are only 23 which the staff considered with a view to our rule's requirements.

The Commission has previously indicated that it is not satisfied with the existing rules with respect to shareholder proxy requests. We are in the process of changing those rules.

I am satisfied, Mr. Chairman, that our staff acted properly under our existing rule. I am not entirely satisfied that our existing rule is clear enough and precise enough in the whole shareholder proposal area.

Mr. ROSENTHAL. In general, what criteria would lead to a decision of not being significant? What criteria do you take into account?

Mr. HILLS. If, for example, all of the business activity of the company in the Middle East area, with either Israel or any of the so-called Arab countries, were a miniscule percentage of the total business activities—say 1 percent or less of the total business activity—then it would be responsible for our staff to offer informal advice that, under existing rules, it is not a material matter which is required to be included in the proxy materials.

If you were dealing with significant percentages, different informal advice would be given.

Mr. ROSENTHAL. In other words, the only criteria for significance or nonsignificance is the amount of business involved?

Mr. HILLS. Not necessarily, Mr. Chairman. As I say, I am hard put to defend the present rule because it is not clear. I am simply responding that it would be responsible for a staff member to offer informal advice that inclusion of the proposal in management's proxy material is not required when the business activity was that small.

Mr. ROSENTHAL. What other factors do you think should be taken into account in rendering a decision as to whether it is significant or not? Or what factors do your associates or colleagues or writers on the subject think should be taken into account?

Mr. HILLS. I will only be able to expose our difficulty with the proposal generally, but I am happy to try to do so. The issue, of course, is what this means for the company as a whole. Obviously, for example, if it involved ethnic discrimination or discrimination on the basis of religious or ethnic background, that would have a reflection far beyond the materiality of the amount of money involved. There, whether it was a matter of violation of law or not, you would be dealing with something that would reflect upon, in my judgment, the quality of management. This cannot necessarily be measured in monetary terms.

Obviously, the question of impact on future business opportunity—if it is likely to expand into this area, for example—could be significant.

But we are dealing with a difficult rule that we have to interpret as to when a stockholder has the right to put something in management's proxy material.

Mr. ROSENTHAL. That part I understand. The question of materiality is a very intriguing one. Look, for example, at the Gulf Oil payouts. Compared to their total assets and total reserves and total income, the money that was spent in bribery was very insignificant. But what it does to the tarnishing of their corporate image and what it does to their goodwill within the community of civilized people might make it very significant and might make it very material.

Mr. HILLS. It might. Obviously however, the standard test of materiality is related somehow to the quality of management or to the earnings of the company. It is a very difficult area.

Mr. ROSENTHAL. I presume you also include assets.

Mr. HILLS. Of course.

Mr. ROSENTHAL. Is goodwill on the books of some of these companies as an asset?

Mr. HILLS. Not very much anymore.

Mr. ROSENTHAL. It may not be very much any more as an auditor's kind of phenomena, but in terms of acceptance of a product in the public arena, goodwill is an important phenomena. And compliance with a boycott might largely affect goodwill, I think.

Mr. HILLS. Mr. Chairman, I am sensitive to that argument, and I think we all are. I am sure you will appreciate that, from our perspective, we have an immense job to do in terms of trying to regulate the securities industry.

I am proud to be at the Commission because it has had, in my judgment, the best record—certainly no one has a better record—of law enforcement in the area of their responsibility.

It is understandable that we are asked time and again to utilize this capacity and expertise and apply it to public policy issues that are not traditionally related to what is material for investors. It is a battle we fight all the time. We have an immensely difficult time with environmental considerations, for example.

But our principal job is to try to maintain the efficacy of the system that we have and to see where we can be properly helpful within the scope of our authority. I do not have a better answer with respect to your query on the boycott and its relation to corporate goodwill simply because we do not have enough experience with the issue. I am sure I feel today on this subject as Chairman Garrett must have felt a year and one-half ago on the subject of corporate bribery. We could see it there and we knew it was important, but at that time the Commission was not capable of articulating what would and what would not be material. But as of May 12 of this year, we were able to give the Senate what I think was a rather extensive report on the question of illegal corporate payments or questionable foreign payments.

Mr. ROSENTHAL. Let me hypothecate a case. Suppose a consumer-oriented company is in a highly competitive market. And let us assume that a large segment of that market is also highly sensitive for a whole host of reasons to the boycott issue and the people in that area are vehemently opposed to a participation in boycott-related activities. A good example would be a large money market, retail-oriented bank in one of our major cities.

If the public in that community were to learn that that bank was engaged in boycott activities, it is possible that the company could lose a considerable amount of its retail business or deposits and possibly other business.

Would not those circumstances thus create a material issue?

Mr. HILLS. Mr. Chairman, I understand the significance of your point. Again, I am sure you appreciate that several times a week I sit as chairman of a judicial-type body. Our Division of Enforcement brings up recommendations, and we have to debate whether or not to bring some sort of proceeding. We have to make these decisions.

I fully appreciate the significance of what you have said, but I just have to wait until we have a few cases that present those kinds of facts to us so that we have a better perspective. It is not a subject on which I really have any easy answer.

Mr. ROSENTHAL. I am trying to hypothecate a case where we can generally agree on the facts. It seems to me that the participation of a major money-market bank in a community that is sensitive to this boycott issue—and there may not be many around the country—would be material. It may well be that depositors would withdraw large sums of money. And that is a matter that stockholders ought to be interested in to protect their investments.

Mr. HILLS. I appreciate the point.

Mr. ROSENTHAL. If the stockholders of Franklin National Bank had known about the shenanigans that the bank was involved in in foreign trading, they would have checked out and saved their investment. Now that obviously was a material thing. This, likewise, can be a material thing for investors if for one reason or another the depositors are motivated to lose confidence in the institution.

Mr. HILLS. Mr. Chairman, I think I can certainly acknowledge that the facts as you present them could be presented to us in such a compelling way that if it appeared that the danger and the risk to equity and assets and profits of that company were significant, the company should make the disclosure.

Again, recognize that we have two roles here. First, the companies may or may not come to us and ask us for our advice as to whether they should or should not make a particular disclosure. We have, in varying forms, something called a voluntary disclosure program, which is a process by which a company comes to our staff and says, "Here are the facts. Here is what we choose to disclose; here is what we choose not to disclose." And we try to give informal advice.

But, in many more cases, the companies decide for themselves what the securities laws require, and we only see the case after the fact.

Mr. ROSENTHAL. Why can you not establish rules and regulations now to deal with every potential situation before the fact? Then the facts may not occur.

Mr. HILLS. Since the Commission was created and began this effort back in 1934, the Commission has from time to time tried to formulate standards of materiality. And indeed when I first came to the Commission some 8 months ago, I was anxious to have guidelines on illegal or questionable corporate payments. The people on our staff, the Division of Enforcement particularly, persuaded me that we could not responsibly proceed in that way, and that we needed far more cases under our belt to see how the various ramifications might affect business and what the responsibilities of the Commission might be.

I think that is a responsible way to proceed. We have been successful with it in the past. We do not have guidelines on the issue of materiality as a general subject. In specific areas, we do try from time to time to provide guidance in the type of report, which I am sure you have seen, that was given to the Senate. But until we have more cases, it is impossible to give guidelines.

Mr. ROSENTHAL. I do not endorse that theory personally, and I am not sure that if I were in your position that I would do it. The FTC,

as a matter of fact, is moving away from the case-by-case approach and trying to deal with general situations in a predictive way and anticipate events. You and I could sit down and write a whole host of scenarios and establish regulations to prevent them from happening.

I think that for a Government agency to sit back and wait for the crime or the misdemeanor to occur and then fail to write rules prohibiting it is sort of an ostrich-like attitude.

Mr. HILLS. Mr. Chairman, in so many areas where the Commission is engaged in rulemaking, I quite agree in principle that agencies should proceed by rulemaking rather than by ad hoc decisions. But, again, we have a very limited but important role to play in defining materiality. The word "materiality" obviously does not involve just the issue of Arab boycott disclosure.

Mr. ROSENTHAL. I appreciate that. Do you think that a shareholder has the right to know whether a company that he or she has invested in, a company to whose capital a shareholder has contributed, is participating or assisting a foreign country in discriminating against American citizens and companies? Do they have a right to know that?

Mr. HILLS. It may be material, Mr. Chairman, depending upon the circumstances of the case. And as I have said, we have had only one enforcement action which is tangentially involved with that issue.

Arguments are regularly made to us that environmental concerns of the company should be disclosed or that corporate history with respect to employment discrimination should be disclosed. When we find violations of the law and when we find patterns of such violations by an issuer, the answer is that we have often and regularly required disclosure. But we cannot look at facts in the abstract.

Mr. ROSENTHAL. This is not an abstract. It is an institutional fact. If an officer or a director of a company was engaged in lascivious conduct of one kind or another, I am really not concerned as a stockholder. But if the board of directors, as company policy, does some of these things, I think the stockholders are entitled to know that.

Mr. HILLS. Where there is some conduct that the company is involved in that the Congress has not said is illegal, it is very difficult for the Commission to say, "This conduct is something that should be disclosed."

Mr. ROSENTHAL. The President of the United States says that this conduct is deplorable. Chairman Burns says it violates the principles under which national banks get their charters. So our Government has denounced this kind of thing, albeit Congress has not made it illegal.

Mr. HILLS. And, Mr. Chairman, the Commission has also supported all of those comments.

Mr. ROSENTHAL. I am just wondering why you cannot make rules and regulations to deal with these things.

Mr. HILLS. We cannot because it is not a matter that is generally within the authority of the Securities and Exchange Commission.

Mr. ROSENTHAL. Disclosure is a matter within your jurisdiction.

Mr. HILLS. Yes. But disclosure requirements, Mr. Chairman, are applicable only if the relevant facts are material to the class of reasonable investors. Our disclosure policies have been built up over 41 years. And we have disclosure documents now in use that are not terribly relevant, or as relevant as they should be, to the purposes

for which they were constructed. And, as the Chairman may know, we are trying to build a new disclosure policy, starting from base zero, that will try to put all of these things into perspective.

Mr. ROSENTHAL. Are you trying to develop new regulations to deal with across-the-board disclosure problems?

Mr. HILLS. We are trying to build a new disclosure policy for the Commission.

Mr. ROSENTHAL. And to define materiality?

Mr. HILLS. In the course of building new policy, we hope to provide better guidance as to what and what is not appropriate for the filings.

Mr. ROSENTHAL. When do you expect these regulations to be available?

Mr. HILLS. The Commission's Advisory Committee has been working for 3 or 4 months. We have six staff people working on it essentially full time. We have made a public commitment to have it done within 18 months of the time we began, but we expect to have various statements from time to time along the way.

Mr. ROSENTHAL. I do not want to be contentious and I will not be; but, why should it take 18 months?

Mr. HILLS. It took 40 years to build up the policies we now have. For example, it will be necessary to rationalize the accounting standards with any new disclosure policies. In addition the question of historical accounting versus contemporary accounting and replacement cost accounting, and the question of what is material to a financial advisor, with respect to today's economic realities, are matters which must be resolved and concerning which there is great disagreement.

Mr. ROSENTHAL. It may be more complex than I see it as being. I see it much more simply. Are there any activities of which the Commission requires across-the-board reporting regardless of whether or not it will have a materially adverse effect on income, assets, or profits of a company?

Mr. HILLS. Yes. And as I said earlier, we are, for example, interested in things relating to quality of management.

Mr. ROSENTHAL. In other words, if a president or a shareholder is a convicted arsonist, would that be a material disclosure?

Mr. HILLS. It could be.

Mr. ROSENTHAL. It could be?

Mr. HILLS. Criminal records of a corporate officer are, of course.

Mr. ROSENTHAL. Criminal records in terms of convictions would be. And how about the question of contingent liability? Hypothetically, wouldn't participation in a boycott situation where it has the potential of offending large numbers of customers in the marketplace be akin to a contingent liability?

Mr. HILLS. Contingent liability is one of the more difficult problems we have. There is, and has been for some time, a major debate between the accounting profession and the legal profession as to what is and what is not a disclosable contingent liability.

The responsibility in all of these cases, I must say, is on the company. Any shareholder in this area has the right to sue on his own to challenge the practices and procedures of the company. If a company has not made some disclosure that is material, under the Federal Se-

curities law any shareholder has the right to come in and sue and demand redress.

So the possibility of contingent liability covers a whole broad spectrum of activity.

Mr. ROSENTHAL. I yield to my distinguished colleague from Massachusetts at this point.

Mr. DRINAN. Thank you, Mr. Chairman.

I want to commend you, Mr. Hills, for the sensitivity you display and that the SEC has displayed over the past several months to this problem.

Could you tell us more about that meeting that you called together in March of the highest officials of the administration? Was there any consensus statement there or was there any feeling that new laws are needed or that the administration should take a new posture?

Mr. HILLS. Congressman, it was obviously not my role as chairman of the SEC to advise in this area. My sense of the meeting, as well as my sense of the activity of many of these agencies before I came to the SEC, was that a number of them were trying very hard to test the extent of their own authority and their responsibility.

Our meeting was called primarily so that the people in our division of enforcement and in the Commission generally would know where there was information in other branches of Government. For example, we were anxious to know what kind of information might be available in the Antitrust Division of the Justice Department and what kinds of studies the Antitrust Division might be able to conduct. It would be foolish for us to engage in a major investigation if we found some other branch of Government doing it.

We have had contact subsequently with the Commerce Department and the Agriculture Department to determine and try to find a pattern of activities or information that would give us a better idea of how to use our rather small enforcement force to deal with the issues.

Mr. DRINAN. It is my impression, rightly or wrongly, that there is no coordinated approach to this issue. The President says things and Mr. Levi says things, but the Commerce Department does not seem to implement the laws. That was my impression at least as of yesterday.

Would you describe the disciplinary action that was taken against at least two companies—Dillon, Read and Blyth Eastman Dillion? Is that disciplinary action such that we can be certain that they are not engaging in the Arab economic boycott now?

Mr. HILLS. I can answer the second question quite easily. It is, I think, quite clear that those companies will not repeat their prior conduct. The weapons of the Commission on repeated violations are severe enough and sufficient to keep people out of the business.

I do not recall, Mr. Congressman, precisely what the remedy was. We will be happy to provide that to you. I cannot recall exactly. It may very well have been a censure. But a censure in this area for a major broker-dealer is a fairly substantial matter. If the conduct is repeated, they could very well lose their license to do business.

[The information referred to follows:]

JULY 2, 1976.

Memorandum to: Peter Kiernan.
From: Tom Kaplan.
Re Congressional request for supplemental testimony on the Arab boycott.

As you have requested in your memorandum dated June 30, 1976, there follows a description of the sanctions taken by the NASD against Dillon, Read and Blyth Eastman Dillon in connection with the Arab boycott.

In July 1975, the Commisson requested the NASD to undertake an investigation focusing on five offerings of securities which the Commission's staff had identified as cases in which discriminatory practices, if they existed, were likely to have occurred. In each of those offerings, which took place between December 1974 and July 1975, an NASD member or an affiliate of a member co-managed a syndicate for distribution of securities with an Arab investment bank firm. All five offerings were offshore offerings exempt from registration with the Commission under the Securities Act 1933.

In December 1975, the NASD reported to the Commission that it had found evidence indicating in some cases that foreign affiliates of NASD members, and in one case an NASD member itself, had agreed, at the behest of an Arab firm, to exclude from a financing syndicate certain foreign investment banking firms which were, presumably, on the boycott list. In each case, however, it appeared that a U.S. affiliate of the boycotted firm was substituted in the financing syndicate.

On April 15, 1976, the findings of the NASD's investigation were presented to the NASD's District Business Conduct Committee for District No. 12 (New York) for its review and appropriate action. The District Business Conduct Committee determined that the practice of "substitution"—removal of a boycotted firm from an underwriting and substitution of an affiliate of the boycotted firm—is inconsistent with just and equitable principles of trade and, therefore, constitutes a violation of the NASD's rules. Accordingly, at the direction of the District Business Conduct Committee, letters of caution (an informal disciplinary measure) were sent to Blyth Eastman Dillon & Co. Incorporated and Dillon, Read & Co. Inc., the two NASD members which, according to the NASD's report to the Commission, had acceded to Arab requests for exclusion of boycotted firms from underwritings by substituting affiliates of such firms. The Conduct Committee also directed that those two member firms be required to provide written representations that they will not engage in such conduct in the future. Finally, the Conduct Committee recommended that the Board of Governors of the NASD issue a notice to members stating that the exclusion of any firm on a discriminatory basis from an offering of securities, including the practice of "substitution," would violate the NASD's rules. The NASD is now in the process of drafting that notice and anticipates that it will be sent following the next scheduled meeting of the Board of Governors on July 16, 1976.

Mr. DRINAN. I wonder, though, whether or not they and their lawyers cannot find ways to circumvent the boycott. Dillon, Read found ways of circumventing it by accommodating both sides to the conflict. And Dillon, Read openly admitted that to a group investigating them for the National Association of Securities Dealers.

Likewise, Blyth Eastman Dillon and Co. admitted that they excluded S. G. Warburg and N. M. Rothschild from the deal that they made. What is to prevent them from doing this, directly, indirectly, or covertly, under existing regulations?

Mr. HILLS. Mr. Congressman, I have, both before and certainly since coming to this Commission, met with the heads of a very large number of companies, including those that have been subjected to being blacklisted. A company that is blacklisted knows very well that it has been blacklisted.

I have discussed this with the head of the National Association of Securities Dealers, the chairman of the New York Stock Exchange, the chairman of the American Stock Exchange, and, as I have said

earlier, with the heads of these very companies that have been involved.

I am personally quite satisfied that those practices will not be repeated. We have excellent self-regulatory organizations. No public underwritings can take place without public filings with the Commission. In all kinds of public filings, they must list the names of the people involved. It is rather easy to see that a traditional name may be missing from an underwriting. It is not a hard matter to police or to understand what is happening.

Mr. DRINAN. In at least 150 corporations this year, there was a minor revolt of stockholders in that they asked the corporation in its annual proxy statement to include information on the Arab boycott. And it is my understanding that some companies asked for a ruling from the SEC, and the SEC made a ruling to the effect that the corporation need not comply with a request from the stockholders to ask this question in the annual proxy statement.

Mr. HILLS. Precisely we have had, as of last week, 55 requests, but not for rulings—for informal advice. Twenty-two of them were simply not filed in time. Two of them were filed by people who were not stockholders. Eight of them were withdrawn.

In 16 cases, our staff gave staff-level informal, advisory views, with which we chose not to interfere—that the relationship of the company's business to the Middle East was so small or so insignificant that the Commission would not take action if they failed to put it into the proxy.

In 7 cases, we refused to give that no-action letter. This is the same as saying, "I am sorry; we will not give you the comfort that you seek from us."

Mr. DRINAN. What about the policy question? Do you think that is a good thing? Should you encourage it?

Mr. HILLS. Our job is simply to see whether or not the shareholder's proposal fits the statute and fits the regulation thereunder. I have not personally seen all of those cases. I have looked at perhaps six or seven of them since I have been there. But it is one of the three or four matters that is the basis for our reexamining our underlying rule. And all I can tell you is that we will provide you with the information on the 55 companies so that you can have a better perspective of how we analyzed them under our existing rules. But we really have only 23 cases that involved informal advice.

Mr. DRINAN. New York State, as you know, has passed a recent law that they issue a questionnaire to all of the underwriters of new securities. That questionnaire asks about economic coercion or boycott provisions involved in the underwriting. Do you receive similar information?

Mr. HILLS. Would you repeat that?

Mr. DRINAN. The New York law states that the Director of the Bureau of Statistics of Securities and Public Financing in New York issues this questionnaire to all underwriters of new securities. The questionnaire asks about any economic coercion or boycott provisions involved in the underwriting.

I am wondering whether the SEC, on a national basis, receives what New York State receives from underwriters who do business in New York?

Mr. HILLS. We do not have any rule requiring that such information be given us. We probably will have, over a period of time, similar information from registrants. Certainly if they provide it to New York, they will probably have it in their prospectus, and we will have it from that source.

Mr. DRINAN. You could do this by regulation, couldn't you? You don't need a statute.

Mr. HILLS. It is not clear to me that we could. We have the right to require information, again, significantly related to the business activities of a company. The Commission, of course, has limited jurisdiction with respect to the composition of underwriting syndicates.

If I may, I would say again something which is difficult to say, but which is a candid observation of the responsibiilty of the Commission. We have a small Commission, which I think is important to bear in mind when considering the volume and nature of work that we do. It is terribly important that we do the job we are primarily responsible for to this Congress. We can dilute and erode the capacity of the Commission to do that job if we try to do too many other things that are not related to the disclosure of material facts concerning the business activities of the securities issuers.

I by no means categorically exclude or include this area of the Arab boycott. It is a significant matter. I am just saying that we have done well in the past by proceeding cautiously. I think the Commission's record, as I have said earlier with respect to questionable payments abroad, is a splendid one. I have no doubt but that we will proceed in this area with the same kind of care and eventually come up with a decision that is responsible.

Mr. DRINAN. On the past record of the SEC, I know that you have been there less than a year. But you state here on page 2 that since 1975 when information regarding the Arab boycott and possible American corporate involvement therein became widely publicized, the Commission has done thus and so.

The Arab boycott has been around since 1949. And these alliances by which Israel is economically damaged have been going on. So it is not really fair to say, is it, that the SEC has done well? No action has ever been taken by the SEC until a few months ago—until, frankly, the time when you came. Is that a fair statement of the facts?

Mr. HILLS. I think a fair statement of the fact is that corporate officials have been bribing throughout the world since the first commercial transaction. The SEC's capacity to deal with the problem, based upon its investigations and its skill and the information that came to it, began about 1 year ago with respect to foreign payments.

Perhaps I like to look at the glass as half full rather than half empty and say that we have done a good job in that area. The issue of the Arab boycott was not one of high visibility to the American public and to the financial world until about a year or so ago. It is now a matter of public consciousness; it is a matter of public concern.

Mr. DRINAN. Mr. Hills, it has been a matter of public policy since 1965. It was visible to the Congress. And the Export Administration Act said in the strongest terms that we want to discourage any involvement in the Arab boycott and any complicity in that Arab economic warfare against Israel.

What does Congress have to do? Do we have to spell out every law that every agency has to follow?

We establish a public policy and we say that the Commerce Department shall register every attempt to have American corporations participate in this economic warfare. What more can we do? For almost 11 years now, it has been almost unenforced.

Mr. HILLS. It is very difficult, Mr. Congressman, to enforce a policy that is not law. It is very difficult to know what the courts will do.

Our activity is subject to court review. Anything that we formally require corporations to do is subject to review. We have no judicial power; we are not a court. And any court taking a look at what we do will, in a sense, look at it de novo and make its own decision.

So, I must say that, where disclosure of participation in the Arab boycott is related to investor protection, I think it is within our jurisdiction. But many people complain that our activities concerning foreign bribery have gone beyond the scope of the term "materiality." We have had responsible and thoughtful lawyers complain to us that we have gone beyond our jurisdiction. I do not think so. I think we have stayed within our jurisdiction. But it is difficult for us to try to articulate a broad policy statement.

Let me say also that I am not sure at all that the antitrust implications of the boycott are fully appreciated yet. There is one case, as the committee knows, that is pending in this area. I think there is considerable confusion as to whether or not some of these boycott activities are violative of the laws. I think some of the policies with respect to visa applications and with respect to the movement of citizens back and forth between some of these countries are still uncertain.

So, we are uncertain about the law, and we are uncertain as to what our jurisdiction and our capacity are to articulate a broad policy concerning a matter such as the Arab boycott.

Mr. DRINAN. One could argue that the stockholders of 150 corporations this year feel that the SEC has let them down. They know about the Export Administration Act. And it is conceivable that those shareholders could go into a court and say that the SEC is not enforcing what they should; namely, a public policy affirmed solemnly by the Congress and reaffirmed.

Mr. HILLS. That is a very appealing argument. It is also one that we get brought home on once in a while. One major corporation, not so long ago, was asked by its stockholders to find out whether or not they should reveal all foreign political contributions. It is a matter of great sensitivity. But something like 99 percent of the stockholders said they did not want any such information in their report. They simply wanted the traditional information.

It is a dangerous thing for us to try to guess what the stockholders want. It is hard for use to test it; it is hard for us to know what it is. I am not saying that we should not require it anyway, but it is a very difficult matter to determine.

The Supreme Court of the United States has before it right now a major case which will affect the scope of our authority. They have a major case reexamining the question of what is and what is not material for our purposes. So we see the question from both sides. We are concerned about the possibility of having our jurisdiction limited by an appellate decision.

I am sorry to be so uncertain, but I must say to you that even in our own deliberations, among lawyers that are all of one mind and one effort, we have great concern as to what the scope of our authority is.

Mr. DRINAN. Tell me if this is a fair impression of the stance of the administration at this moment. They have enunciated some noble moral views, especially President Ford during last November, but no concerted action has been taken. We may have more information now about the Arab boycott since private parties are litigating in court or pushing at stockholders' meetings, but the administration does not have any systematic approach. And in at least four or five separate subcommittees in this Congress, investigations are being held and laws are being proposed that would force the administration to do something.

If we have to do that, we have to do it. But Rogers Morton stated that the Commerce Department did not need any more legislation in order to make a regulation making illegal all participation by American corporations in the Arab boycott.

Mr. HILLS. I can only give you an impression. It was at one time my responsibility to try to find out what the extent of the existing authority was. My own private impression is that what the administration did last November—and that happened to be during my transition from one job to another—however short it may fall of what some people wanted the administration to do, was a systematic effort to deal with these problems. The effort with respect to the NASD. which has been productive, was a direct outgrowth of that. The Federal Reserve Board and some other agencies did take some action in conjunction with that systematic effort to try to find out what existing rules and regulations could do.

I am pleased to have a letter from several major organizations, such as the Anti-Defamation League, that expressed pleasure at the extent of the effort that was made. I cannot quantify it in terms of what the art of the possible is, or what the expectation of Congress is, but I thought, speaking from my perspective, frankly, that it was an honest, good-faith effort to deal in a realistic and effective fashion with the problem of the Arab boycott.

There were a number of regulations and administrative rules issued at that time. And, I must say also that the report that we had in March from the various agencies that had been dealing with the new policy for 4 months showed, to me at least, significant progress in several areas.

Mr. DRINAN. How do you measure progress? The volume of business is obviously going up.

Mr. HILLS. A year ago at this time, American corporations in this country were regularly receiving solicitations and commercial contracts which included provisions requiring boycott compliance. Those contracts were being transmitted by State Department attachés in the Middle Eastern countries; they were transmitted by the Commerce Department to American corporations. They had the most venal kind of representations in them, such as, "Would you sign and certify that your company is not Jewish; that you have no Jews on your board of directors?" That was a most degrading activity, I think, for companies and for our Government to be involved in. That was stopped and stopped effectively. I think that was major progress.

Mr. DRINAN. What do you mean by "effectively"? The State Department and the Commerce Department do not peddle all of their wares anymore, but they are still out there. The language may be more sophisticated, but the impact and the effects are the same.

Mr. HILLS. It may be.

Mr. DRINAN. Then you are retracting what you have just said. You have said that it was an effective policy. Give me some facts. I say that the Ford administration has failed miserably.

Mr. HILLS. The Government, up until that time and for many years, had been regularly soliciting American corporations to bid on such contracts. That has stopped entirely.

Now, there may well be independent solicitations by Middle Eastern countries directly to those corporations, and it could be that the practices are just as bad. But, if companies are signing such certifications, in my judgment, they are violating the law of the country. And certainly the American Government is not participating—and that, to me, is a major improvement.

Mr. DRINAN. Here is a partial list of those who are complying. What are you doing to these companies?

Mr. HILLS. Again, I have to relate to my statement that we are doing what is within our jurisdiction.

Mr. DRINAN. Sir, I said that. SEC, in my judgment, is doing more than other agencies. You are pushing to do everything possible.

But let me read the policy of the United States. This is 10 years old now and has been re-enacted at least once.

> It is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States, and to encourage and request domestic concerns engaged in the export of articles, materials, supplies, or information, to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against another country friendly to the United States.

I suppose we could make it all illegal, but people might find a way around that. Yesterday we had representation here from two major banks in New York who were saying that it is essential to build up the business that we do with the Arab nations and nothing—nothing—can deter that.

But this is a moral statement. And I suppose we could turn it into law. I and others have a bill in to do precisely that. But do we have to have a law to do everything that we require, as the Congress of the United States, as a public policy?

I guess that you have said that the agencies are not going to follow a policy. They do not care for moral principles. It is the policy of the United States, but we will have to say that it is unlawful and that it is a crime. Is it your feeling that we will have to turn it into a law and make it a crime and put civil penalties on it if we want an effective policy?

Mr. HILLS. Mr. Congressman, I suppose I feel fortunate that it is not my responsibility now to balance the foreign policy and the economic aspects of the argument. I really can only comment that, as of last November, I thought that what was done was responsible. I do not know the answer to your question. That is a balance that I think Congress

has to strike. And we will do our best under the existing authority to meet both the spirit and the letter of the law.

As I said earlier, the requirements of disclosure, as we interpret them, do not depend upon illegality. But they do depend upon tests that are subject to judicial review. We cannot, whatever our intention or whatever our desires, require something that will not be enforced by the courts. It is silly for us to impose something that is not going to work.

Mr. DRINAN. What are the norms by which we can measure the success of this policy? You have asserted that it has been successful. The administration has sought to do something and you say that it has been effective. But I do not see any indication of success.

Mr. HILLS. If I may, I would like to give you the background of the NASD effort. Again, I have to speak personally. I had a number of friends who had small companies that were doing perhaps $30 million or $40 million a year in business. They had investment bankers.

The world knows that a large amount of money has been accumulated by the Middle Eastern countries. That money is flowing back and forth and a lot of that money has come into this country.

A very dear friend of mine came to me and said that he was going to change his investment banker. His reason was very simple. He had heard that the so-called blacklisted investment bankers were not going to be able to participate in underwritings with various types of Middle Eastern concerns. He was a man of good heart and good will, but he thought that it would not be wise for him to have an investment banker that was subject to the blacklist.

Mr. ROSENTHAL. That is the whole point of the story. If we made it illegal or if the Government complied, he would not have to make those kinds of choices. There would be no competitive disadvantage. That is the point of the story.

Mr. HILLS. I am only saying that it seemed to me at the time particularly important, with respect to the investment banking community, that the moral and the economic impact of this be made unmistakably clear to the industry. And I think that we have been quite effective in that area in reversing the trend. I think there is not as much fear as once was there. I am sure it is there in some degree. But in that area, particularly, we have been able to be effective.

I cannot speak as to other areas. But in just speaking of the one area, I believe that the action taken by the NASD, which was interested in this effort, and by our Commission and by our Government, was effective. I know the Treasury Department expressed great concern, individually and privately, to a number of people that this was a matter in which we could not let the ordinary form of capital formation be interfered with. Capital had to be available on a nondiscriminatory basis.

And I think we do have the economic authority in this country to make that stick. I think that economic authority is being exercised. I think the community has refused to yield to those kinds of pressures.

Mr. DRINAN. Thank you very much, Mr. Chairman.

Mr. ROSENTHAL. We are going to have to break for about 2 or 3 minutes. But before we go, you said that the writing of the regulations, the draft and the consideration of the regulations which you

anticipated, could take as long as 18 months. And you said that there was an input from some advisory committees. Is that correct?

Mr. HILLS. Yes, sir.

Mr. ROSENTHAL. How many advisory committees are there?

Mr. HILLS. Before we get done, I think we will have something like a pattern of 20 or 30. We have an advisory committee of our own of 18 people. They represent a rather broad number of people from various areas.

Mr. ROSENTHAL. Will you furnish the committee with a list of each and every one of these advisory committees and the membership of them?

Mr. HILLS. We would be pleased to do that.

[The information referred to follows:]

UNITED STATES OF AMERICA BEFORE THE SECURITIES AND EXCHANGE COMMISSION

Securities Act of 1933, Release No. 5673, February 2, 1976

Securities Exchange Act of 1934, Release No. 12064, February 2, 1976

Roderick M. Hills, Chairman of the Securities and Exchange Commission, with the concurrence of the other members of the Commission, today announced the appointment of an Advisory Committee on Corporate Disclosure. Initially the Committee will consist of thirteen members who have extensive experience with the disclosure system as attorneys, accountants, academics, financial executives, analysts and other users of information. Additional persons may be appointed if it appears that it would enhance the work of the Committee. Commissioner A. A. Sommer, Jr. will chair the Committee. Mary E. T. Beach of the Division of Corporation Finance will serve as the staff director of the study.

BACKGROUND

The concept of disclosure has been central to the federal regulation of securities since enactment of the Securities Act of 1933, the "Truth in Securities" Bill. As was stated in the preamble to that Act, Congress intended "To provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails . . ." This concept was expanded in the Securities Exchange Act of 1934, which provided for a system of continuous disclosure, initially only by companies listed on national securities exchanges, but subsequently extended to a large number of issuers with securities traded over-the-counter.

Following the Congressional mandates expressed in this and other legislation, the Commission has developed and refined a comprehensive system of disclosure in an effort to reflect its experience in administering the system, changes in the securities markets and the changing needs of investors.

The Commission's last study of its disclosure requirements, from 1967 to 1969, resulted in the Disclosure Study, often referred to as the "Wheat Report." The Wheat Report recommended numerous changes in the Commission's reporting requirements, strongly urged the further development of a continuous disclosure system, and recommended solutions to a number of problems relating to secondary distributions and acquisition transactions.

The Wheat Report recognized the necessity of continuing attention to disclosure policy: "Finally, this report reflects the conclusion that change in disclosure policy through Commission rule-making should be evolutionary in nature. The results of each stage in that evolution should be tested and evaluated before further changes are made. Thus, in no sense do the recommendations represent a final set of parameters, but only the Study's judgment as to the best practicable steps to be taken at this time."

Substantial questions concerning the substance and effectiveness of the corporate disclosure system continue to be raised. In some measure, these questions reflect the intensification of forces identified by Commissioner Wheat, such as the increasing institutionalization of the markets. Moreover, since the time of that Report, an increasing body of scholarly work examining the economics and

structure of information systems has evolved; increasing consideration has been given to the "random walk theory" and the efficient market hypothesis; new techniques of portfolio management are being utilized; and penetrating questions have been asked concerning the costs and benefits of the current system. In addition, the President and Congressional leaders have urged all units of government to examine their practices and procedures to determine whether they are cost effective, whether they impose inordinate burdens on business and the public, and whether competitive forces, among others, might be substituted for governmental regulation.

In response to these inquiries and in accordance with the Commission's practice of continual reevaluation of its major policies, the Commission has directed that a new study be undertaken.

PURPOSE

The present study will not be confined to an examination of the Commission's disclosure requirements, but will embrace the entire corporate disclosure system that has developed in this country—partially in response to the requirements of the acts administered by the Commission, and partially in response to other forces. Initially, the Committee will seek to define the purposes and objectives of a corporate disclosure system. It will seek to identify more precisely those who make investment decisions; the information they actually use in making such decisions; the extent to which such information is found in or secured from Commission files and documents required to be prepared and distributed by Commission requirements; the means by which users secure such information; the validity, accuracy and credibility of the information used; and the types of information not presently available, or widely disseminated, which such investment decisionmakers would find helpful.

It will examine the institutional framework within which disclosure presently occurs, including the roles of preparers of information, auditors, and the purveyors and users of information; the various governmental and other requirements related to disclosure, and the effect of current legal concepts and developments influencing innovation within the disclosure process. The study also will seek to identify the types of information which impact market prices, the implications of modern theories concerning portfolio management and the extent to which modern academic research concerning markets indicates the need for modifications of the system. Finally, the study will seek to ascertain the costs of maintaining the system, the costs related to the disclosures mandated by the federal statutes and the Commission rules and the identity of those who bear them.

The study will be conducted through various means, including analysis of economic and other literature concerning all aspects of disclosure; examination of the present legal structure within which disclosure occurs; and original research where needed and feasible.

If indicated by the study's conclusions, the Committee will make recommendations for changes in the present regulations relating to disclosure, including means for better dissemination of information filed with the Commission and making such filings more relevant to the needs of investors. If change is warranted, modifications of Commission rules and regulations and legislation will be suggested, where appropriate.

Disclosure serves many functions under the securities laws. In addition to its function in informing investors at the time of distribution and on a continuous basis, disclosure principles are central to a number of exemptions from registration under the 1933 Act and to the liabilities that have been imposed by the courts under Rule 10b–5. It is not, however, the principal purpose of the study to explore the specific disclosures that may be necessary to the availability of an exemption or that may affect the liability of "insiders" and others under Rule 10b–5 or similar sections of the statutes administered by the Commission. Also, it is not expected that significant attention will be directed to the administrative processes of the Commission.

MEMBERSHIP

The members of the Committee are:

1. William H. Beaver, Professor of Economics, Stanford University, Palo Alto, Calif.
2. Victor H. Brown, Controller, Standard Oil of Indiana, Chicago, Ill.

3. Arthur Fleischer, Jr., Partner, Fried, Frank, Harris, Shriver & Jacobson, New York, N.Y.
4. Ray J. Groves, Partner, Ernst & Ernst, Cleveland, Ohio.
5. Deborah E. Kelly, Director of Investment Research, Lowe's Companies, Inc., Wilkesboro, N.C.
6. Homer Kripke, Professor of Law, New York University, New York, N.Y.
7. Martin Lipton, Partner, Wachtell, Lipton, Rosen & Katz, New York, N.Y.
8. Robert A. Malin, Senior Vice President and Director, First Boston Corp., New York, N.Y.
9. Roger F. Murray, S. Sloan Colt, Professor of Banking and Finance, Graduate School of Business, Columbia University, New York, N.Y.
10. David M. Norr, Partner, First Manhattan Co., New York, N.Y.
11. A. A. Sommer, Jr. (Chairman), Commissioner Securities and Exchange Commission, Washington, D.C.
12. Elliott J. Weiss, Executive Director, Investor Responsibility Research Center, Washington, D.C.
13. Frank T. Weston, Former Partner, Arthur Young & Co., San Diego, Calif.

A staff of four to seven persons, drawn predominately from the current staff of the Commission, will be assigned to work full-time on the project. Members of the staff selected so far are:

1. Mary E. T. Beach (Staff Director), chief Office of Disclosure Policy and Proceedings, Division of Corporation Finance.
2. Hugh R. Haworth, Office of Economic Research.
3. Michael Rogan, Division of Corporation Finance.
4. John C. Richards, Office of the Chief Accountant.
5. Charles R. Wenner, Division of Corporation Finance.

It is expected that a number of econometirc and other studies may be undertaken, and in some instances these studies may be contracted for with outside agencies.

The Committee is expected to complete its work no later than July 1, 1977.

Mr. ROSENTHAL. Is it really going to take that long to do these regulations?

Mr. HILLS. In this area of deregulation, I much prefer the word "policy" to regulations. We are going to create a new disclosure policy. And that disclosure policy will be involved in all kinds of things, including such areas as the quality of management. This is really the best way to label the type of inquiry that we are involved in here. But I must say that particular aspects of the Arab boycott may involve serious economic repercussions as well.

Mr. ROSENTHAL. Is it possible that it can be done in a shorter period of time?

Mr. HILLS. It would be wrong for me to overstate the relevance of our disclosure reexamination to the subject of the Arab boycott. In terms of creating a meaningful disclosure policy, matters such as the boycott will necessarily be taken care of and will be considered.

For example, in the area of questionable payments, we did not wait for our new disclosure policy to deal with the subject of questionable payments. We produced a report to the Senate giving the results of our enforcement activities. So, for the time being, we will proceed on a case-by-case basis. As I have said, we have roughly nine cases under investigation now. We do not think, however, Mr. Chairman, no matter where our hearts my lie in this, and no matter what our instincts are, and no matter how much we share the goal of effective enforcement of the congressional policy, that it is going to be useful to look to the Commission for a major role. But we will have a role.

Mr. ROSENTHAL. The SEC has a very significant role. Disclosure sometimes prohibits some of these nefarious practices from being engaged in.

Mr. HILLS. In the scope of our authority, we have a very important role to play. And we will play that role.

Mr. ROSENTHAL. You are much too modest. We will take a 5-minute break.

[Recess taken.]

Mr. ROSENTHAL. The committee will continue. We appreciate everybody's cooperation. We will try to finish this as quickly as we can, Mr. Chairman, so that you can get back to your otherwise assigned duties.

Is the rulemaking procedure that you are going through pursuant to any agenda? Are the boycott-related issues on an agenda that the rulemaking groups are considering?

Mr. HILLS. Again, we do not call it a rulemaking procedure at this time. A number of rulemaking procedures will come out of it. When we are done with it, it may require a change of existing rules.

But, I do not want to overstate the relevance of this matter. Things such as the quality of management, questionable payments, and bribery, participation in boycott activities, environmental causes, and the rest of them will be very much on the agenda of the disclosure considerations.

Mr. ROSENTHAL. But the boycott matter is on the agenda?

Mr. HILLS. I have not talked with Mr. Sommer, the former Commissioner who is the chairman of the committee, as to the precise agenda on these matters. He and I have discussed the fact that this type of disclosure is an important area for them to put into perspective for us.

Mr. ROSENTHAL. I do not want to belabor the point, but the President of the United States, as you well know, issued a very, very full and complete statement on this issue. And as Congressman Drinan has stated very articulately, Congress has enunciated policies on this issue. And it would seem to me that the issue should be formalized on an agenda. But how you work your in-house proceedings is something else.

Mr. HILLS. The responsible way for us to proceed, in my judgment, is to do precisely what we are doing. The dialog that we have with the self-regulatory organizations is terribly important; the investigative efforts of our Enforcement Division are important. It is probably not going to be possible, in my judgment, for the advisory committee to have a very good basis for several months. Certainly we want to finish the investigations that we now have underway. And then we will provide information to the advisory committee in this area as we have in the area of questionable payments.

[The information referred to follows:]

SECURITIES AND EXCHANGE COMMISSION

NOTICE OF MEETING

Advisory Committee on Corporate Disclosure

July 12 and 13, 1976, 10 a.m., room 776, 500 North Capitol St., NW., Washington, D.C. 20549

Agenda

I. Status report on the committee's questionnaire interview survey.
II. Conclusion of discussion of the goals of the committee's work.
III. Discussion of the objectives of an ideal corporate disclosure system.

IV. Discussion of the legal liability implications of disclosure of forward-looking and other varieties of "soft" information.
V. Discussion of such other matters as may properly be brought before the committee.

Mr. ROSENTHAL. You said there were 20-odd advisory committees working with you on this.

Mr. HILLS. We have, directly or indirectly, several committees reporting to the Commission. My guess is that we have four advisory committees working on various areas of reporting. The Advisory Committee of 18 or 19 people reports directly to the Commission. It has established a liaison with a number of other groups.

Mr. ROSENTHAL. You are going to provide all of these to the subcommittee, along with the names.

Mr. HILLS. We will provide all of those contacts.

Mr. ROSENTHAL. What are the backgrounds of these 18 or 19 people? Are there any public interest types?

Mr. HILLS. We think so. We have a group that represents shareholders; we have a number of college professors who have done a good deal of work in this area.

We had some correspondence with Mr. Nader who complained that we had not been responsive enough to consumer interests. We have tried to respond to that by explaining what we are doing in the consumer area. I think you can make a judgment when we provide all of that information to you.

Mr. ROSENTHAL. I do not want to phrase this improperly, and it may just be your style of presentation, but I do not observe a sense of urgency. Do I misread it?

Mr. HILLS. I think that it would be wrong to think that the effort, that we are trying to make with respect to our disclosure policy is proceeding with a sense of urgency about the Arab boycott. We are proceeding on the rebuilding of a disclosure policy with a sense of urgency. It is something that is timely and appropriate.

The reconstruction of the disclosure policy will be, I think, quite helpful and important in trying to relate these matters which have social and moral overtones to the traditional areas of disclosure.

Mr. ROSENTHAL. And the new regulations will cover all of these areas?

Mr. HILLS. We will provide a new disclosure policy which will include these areas as well. I am hopeful that the business world and the shareholder world will understand better how we balance our various responsibilities. But I do not wish to overstate the relevance of this thing to the matter of the Arab boycott.

Mr. ROSENTHAL. That is a matter of judgment. As I said earlier, I think you are being modest as to the impact the SEC can have on this area.

In the last sentence of your June 1, 1976, letter, in responding to question 2, you state:

> If the breach of the requirement or condition, or disclosure of the fact that the registrant had agreed to such condition, would result in a material adverse effect upon the registrant's business, disclosure would also be required.

Suppose a company conducted a material amount of business in an Arab country, and as a condition to conducting such business had to

accede to certain boycott-related requests, such as supplying certain information or precluding itself from employing or doing business with a certain significant class of individuals or companies, thus denying the company of valuable and potentially material resources of personnel, goods or services, or possibly violating U.S. law and stated policy. Should the company be required to reveal such conditions of doing business?

Mr. HILLS. The various observations that you made seem to me to provide a framework for some form of disclosure. If a company is doing business in a wide range of areas and has a history of doing business in Israel or doing business with companies that do business in Israel, and it has agreed to cease doing business or to cut off a line of business opportunities in response to the boycott, that is the kind of thing that might be material.

Mr. ROSENTHAL. Are you aware of any instances where companies have reported such conditions in either their annual reports or other documents of disclosure?

Mr. HILLS. We have related some in our letter to this committee. I know of none other than those.

Mr. ROSENTHAL. Would it be a materially significant fact requiring disclosure for a company doing a material amount of business in Arab countries to engage in, as a condition for doing such business, conduct contrary to the stated recommendations of the Commerce Department, which itself has the authority to grant or revoke a company's export license or levy other penalties against that company?

In other words, if a company violates the proscriptions of the law—and I acknowledge that it is not illegal, but it is stated policy both of the U.S. Government and of this President—the Commerce Department can take away their export license. That seems to me a material business.

Mr. HILLS. There is no question about that. If a company is putting its export capacity in jeopardy, that is a matter that should be of material significance.

Mr. ROSENTHAL. Precisely. On page 11 of your letter of June 1, 1976, you mentioned that a meeting was held on March 12, 1976, at the Commission's request, with other Government agencies to discuss general approaches to these problems.

I think Congressman Drinan asked you to do this, and I want to restate it, but you will furnish for the record who was at the meeting and if there were an agenda and a brief, concise review of what took place.

Mr. HILLS. Yes.

[The information referred may be found on p. 540.]

Mr. ROSENTHAL. Mr. Drinan.

Mr. DRINAN. I am sorry for the delay, Mr. Hills. I commend you once again for what you have done. I will be very interested in the material that the chairman has suggested.

I have no further questions at this time, Mr. Chairman.

Mr. ROSENTHAL. I want to thank you very much. Your agency and you personally have been out in the forefront on this issue.

There is no question that the Arab countries have a right to decide with whom they want to do business. If they do not want to do business

with Israel or Israeli companies, that is their business. That is a political boycott of a primary character. And that kind of thing has been going on for years and years and years. It is accepted in the international community.

But what really bothers me, aside from any particular interest I may have in Israel and the Middle East, is the ability to influence the conduct of American companies—both secondarily and in a tertiary situation. And that is highly offensive.

Not only the moral imperative makes it material for disclosure, but the banking consuming public may at some time decide to exercise its marketplace prerogatives. And those would be very material to the financial success of those companies.

So there are two areas. Is the moral imperative a material thing? I guess in modern-day America that we have not really considered it that. But if you merge that together with the potential financial problems that a company may have because of the loss of good-will in the marketplace, it can be very material and the kind of thing that, at least at first blush, you should take quite seriously.

Mr. HILLS. The objective of our continuing concern is to try to analyze precisely the kinds of things that you have mentioned.

Mr. ROSENTHAL. I want to thank you again and commend you for the forthright nature of your presentation.

Our next witness is Mr. John D. Hawke, General Counsel of the Federal Reserve Board.

If you will take over, Mr. Drinan, I will go and vote.

Mr. DRINAN. Mr. Hawke, I know you have a prepared statement. Why don't you present that statement in any way that is appropriate.

STATEMENT OF JOHN D. HAWKE, JR., GENERAL COUNSEL, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Mr. HAWKE. Thank you, Mr. Chairman.

I am pleased to appear on behalf of the Board of Governors of the Federal Reserve System to discuss the limitations of existing laws with respect to the Board of Governors' ability to deal with the participation of U.S. banks in foreign boycott practices.

At the outset, I should state that the only evidence the Board has of bank participation in boycott practices relates to the financing of exports from the United States to Middle East countries. Specifically, the Board has received complaints that certain American banks have been giving effect to the Arab boycott of Israel by processing letters of credit containing boycott provisions. Letters of credit are a conventional means by which an importer arranges to make a payment in an international business transaction. In the typical case, an importer will open a letter of credit through a bank in his own country, which will then arrange to have the credit confirmed by a correspondent bank in the exporter's country. A letter of credit is simply an undertaking that the issuing or confirming bank will honor a draft presented to it for payment when the draft is accompanied by certain documents specified in the letter of credit itself. In the normal case, these documents would include such commercial documents as invoices, bills of lading, and certificates of insurance.

In connection with exports to certain Middle East countries, however, it has become customary for importers to include requirements in letters of credit calling for the presentation of various types of certificates intended to give effect to the Arab boycott of Israel. For example, the importer may require that the exporter certify that the goods are not of Israeli origin, that the goods are not being shipped in an Israeli vessel or a vessel that will call at an Israeli port, or that the exporter itself is not on, or affiliated with a company, on the Arab boycott list or that the exporter otherwise will agree to abide by the terms of the Arab boycott of Israel.

Federal law does not generally prohibit U.S. banks from issuing or confirming letters of credit containing such boycott clauses. While the Export Administration Act of 1969 declares it to be the policy of the United States to oppose boycotts against foreign countries friendly to the United States, the act does not prohibit domestic concerns engaged in the export trade from taking action that has the effect of furthering such a boycott. In this regard, the act merely states that it is U.S. policy to "encourage and request" domestic concerns not to take such action.

Regulations of the Department of Commerce under the act prohibit all exporters and related service organizations, including banks, from taking any action in connection with an export transaction that has the effect of furthering or supporting a boycott against a country friendly to the United States when that practice would have the effect of discriminating against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin. However, as to other boycotts—that is, boycotts other than those having the prohibited discrminatory effect—the Department's regulations simply reiterate the statutory encouragement and request to domestic concerns not to participate.

On December 12, 1975, the Board of Governors issued a policy statement dealing with the participation by member banks in foreign boycott activities. The Board's statement called the attention of member banks to the policy of the United States as set forth in the Export Administration Act and to the newly adopted regulations of the Department of Commerce under the act, and expressed the view that it was inappropriate for U.S. banks to give effect to a boycott against a friendly foreign country. The Board's statement made reference to the inclusion of boycott provisions in letters of credit, and it noted that the agreement by a U.S. bank to observe such provisions in a letter of credit could constitute a violation of Federal antitrust laws or applicable State antiboycott laws. The Board's views were reaffirmed in a clarifying statement on January 20, 1976.

Following the issuance of these statements, it was called to the Board's attention that some U.S. banks were continuing to process letters of credit containing boycott clauses, and the Board was urged to take enforcement action to terminate that practice. In this connection, the Board's legal staff has given consideration to the extent to which action by the Board might be authorized under existing law.

The principal enforcement power that the Board has is its authority under the Financial Institutions Supervisory Act of 1966 to issue cease-and-desist orders against State banks that are members of the Federal Reserve System. Under the act such orders may be issued

to remedy violations of law or regulations or unsafe or unsound banking practices.

The Comptroller of the Currency and the Federal Deposit Insurance Corporation have identical powers with respect to national banks and nonmember insured banks respectively. If the involvement of a U.S. bank in a boycott practice would constitute a violation of law or regulation by that bank, I believe that the Supervisory Act would empower the appropriate banking agency to institute a cease-and-desist proceeding to terminate and remedy that practice. The cease-and-desist power could be invoked, therefore, where a bank took action in furtherance or support of a boycott against a friendly foreign country under circumstances in which the effect was to discriminate against U.S. citizens on the basis of race, color, religion, sex, or national origin.

For example, such a case might arise if a bank enforced a provision in a letter of credit that required the exporter to certify that it had no officers or directors of the Jewish faith. The Board has no evidence that banks have engaged in such prohibited boycott practices, however, and while our cease-and-desist authority would empower the Board to take remedial action in such a case, the violation in issue would relate to the Commerce Department's Export Administration regulations, and not to any present regulation of the Board. Congress has, of course, given the Department of Commerce the principal responsibility for implementing U.S. policy under the Export Administration Act.

Under the Supervisory Act, a cease-and-desist proceeding could be instituted to remedy an unsafe and unsound practice by a bank, even though no violation of law or regulation were present. Although the participation by a bank in a boycott might be argued by some to be an unsound practice, this provision of the Supervisory Act has generally been viewed as reaching practices that threaten the financial safety or soundness of the bank itself. Thus, in the absence of a violation of law or regulation, I do not believe the Supervisory Act would provide an effective sanction against boycott practices by banks.

The Board's legal division has also considered whether the Board's authority under the Federal Trade Commission Improvement Act to adopt regulations defining unfair or deceptive trade practices by banks would afford a remedy. The Board's power to define unfair or deceptive practices is a new one, and its boundaries have not yet been fully explored. Even if boycott practices could be considered "unfair," within the meaning of this act, however, it is questionable—particularly in light of the fact that Congress has given the Department of Commerce principal responsibility for enforcing U.S. policy with respect to foreign boycott activities—whether it would be appropriate for the Board to use this authority to prohibit boycott practices that Congress has decided not to declare unlawful under the Export Administration Act.

Finally, our staff has considered the Board's authority under the Equal Credit Opportunity Act Amendments of 1976 to adopt regulations relating to discrimination in credit transactions on the basis of race, color, religion, or national origin. Again, I believe this authority would be of limited utility in reaching boycott practices that were not otherwise prohibited by law or regulation.

As I mentioned, the Commerce Department's regulations already prohibit banks from taking any steps to further a foreign boycott where the effect would be to discriminate against U.S. citizens on the basis of race, color, religion, or national origin. The Equal Credit Opportunity Act prohibits such discrimination against an applicant for credit in any aspect of a credit transaction.

The relevant question here—and it is a difficult one—is whether the exporter-beneficiary of a letter of credit can be considered to be an "applicant" for credit within the meaning of the act. In any event, even if the Board has authority under the Equal Credit Opportunity Act to protect exporters in such transactions, regulations under this act would seem to be duplicative of those already in force at the Department of Commerce under the Export Administration Act. I have serious reservations whether the Board's legal staff could find authority under the Equal Opportunity Act to prohibit the enforcement of boycott provisions in letters of credit that give effect to the Arab boycott of Israel, but that do not have the effect of discriminating against U.S. citizens on the basis of race, religion, or national origin.

In short, Mr. Chairman, while the Board has ample authority to take enforcement measures with respect to banks that engage in boycott activities that violate a clear statutory prohibition, or even a regulation adopted by another agency of Government, our legal staff has serious doubt about the Board's ability to take regulatory or coercive corrective action with respect to boycott practices that are not prohibited by law or regulation.

Mr. DRINAN. Thank you very much, Mr. Hawke, for your statement. Do you have any comment as to what, if anything, the Federal Reserve could do about the fact that a significant increase has occurred over the past few years in the number of U.S. branch banks in the Arab nations, whereas the number of U.S. branch banks in Israel has declined from two to zero since the end of 1973?

Mr. HAWKE. Mr. Chairman, I am not in a position to comment on that. I am not familiar with those facts. But I would be happy to request our Divisions of International Finance and Banking Supervision people to provide a response on that question.

Mr. DRINAN. Obviously when the number of branch banks in the Arab nations go from 10 to 23 over 3 or 4 years, with four new branches expected to open soon, this is a matter that is known to the Federal Reserve.

To your knowledge, has any investigation been made of that? It seems so self-evident that the two banks that pulled out of Israel did so after 1973 for obvious reasons—they wanted commercial transactions in the Arab nations and they could not get those transactions if they simultaneously existed in Israel.

What has the Federal Reserve done to investigate this obvious situation?

Mr. HAWKE. I will have to pass that question on to our International Finance and Banking Supervision people, Congressman Drinan.

Mr. DRINAN. You are General Counsel, Mr. Hawke. It is a basic legal question. And every Federal agency has the obligation of carrying out the Export Administration Act.

You say that you have power ". . . with respect to banks that engage in boycott activities that violate a clear statutory prohibition." I am not certain of the clear statutory prohibition, but clearly this is contrary to the whole thrust of what we sought to do in the Export Administration Act. That is a very significant fact that is well known. And I am simply asking you whether the Federal Reserve has given consideration to this matter.

Mr. HAWKE. I simply cannot answer the question, Congressman Drinan. There may well be people at the Board who are directly involved in the question of branch banking in the Middle East and in Israel who have the answer to that question. It is not a matter that comes before the Legal Division.

[The information requested follows:]

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
Washington, D.C., June 25, 1976.

Hon. BENJAMIN S. ROSENTHAL,
Chairman, Commerce, Consumer, and Monetary Affairs Subcommittee of the Committee on Government Operations, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: During my testimony before your Subcomittee on June 9, 1976, concerning the Arab boycott of Israel. Congressman Drinan asked whether the Board of Governors had any comment on the fact that the number of branches of U.S. banks in Israel declined from two to zero between the end of 1973 and 1975, while the number of branches in Arab nations increased from 10 to 23 during the same period. Congressman Drinan expressed the view that "the two banks that pulled out of Israel did so after 1973 for obvious reasons—they wanted commercial transactions in the Arab nations and they could not get those transactions if they simultaneously existed in Israel."

The statistics referred to by Congressman Drinan appear to have been derived from a table that the Board of Governors furnished to Chairman Moss of the Subcommittee on Oversight and Investigations of the House Interstate and Foreign Commerce Committee on May 11, 1976. Those data indicate that as of year end 1973, Exchange National Bank of Chicago ("Exchange") maintained two branches in Israel. Exchange is the only U.S. bank that has had a branch in Israel during the past ten years. During 1975, Exchange sold its Israel branches to an Israeli bank, Japhet Bank Limited. In connection with that sale, Exchange acquired a 25 per cent interest in Japhet Bank (which has since changed its name to American Israel Bank Limited). In Exchange's application to acquire shares of Japhet Bank, it was stated that Exchange's branches in Israel had been hampered by a lack of deposits in local currency. It was Exchange's judgment that combining its branch operations with an existing local institution would better serve the U.S. business community doing business in Israel. Exchange does not have any branches in Arab nations, and from the record of the Japhet application, it does not appear that the closing of its Israeli branches was motivated by a concern for interests in Arab nations.

During 1974 and 1975, U.S. banks opened 13 new branches in Arab countries. First National City Bank (now Citibank, N.A.) opened 4 branches in the United Arab Emirates, two in Yemen Arab Republic and one each in Oman, Jordan and Egypt. Manufacturers Hanover Trust Company opened one branch in Egypt and the First National Bank of Chicago opened 3 branches in the United Arab Emirates during that period. It does not appear that the sale of Exchange's branches was a relevant consideration in the decision of other U.S. banks to open offices in the Middle East.

I hope that the above information will help to clarify the issues raised by Congressman Drinan.

Very truly yours,

JOHN D. HAWKE, JR.,
General Counsel.

Mr. DRINAN. On another point, would you describe the pressure that Dr. Burns received from the banks after his first declaration on this matter, and why he felt compelled to clarify his mandate?

Mr. HAWKE. I do not think it is correct to say that Dr. Burns or the Board got pressure after the Board issued its December statement. The clarification was issued at the request of the President of the Federal Reserve Bank of New York who said that he had had requests from a number of banks in New York as to the scope of the Board's December 12, 1975 policy statement. Specifically, they wanted to know whether the Board was intending to impose by that statement new legal obligations on banks, other than those they were already subject to under the Export Administration Act and regulations.

The Board's clarifying statement was addressed solely to that point. And in its clarifying statement in January, the Board reiterated its basic policy statement of December 12 on the boycott. The January statement was not intended in any way to signal a retreat from the Board's basic feelings about the participation of banks in the boycott as expressed in the December 12 letter.

Mr. Drinan. It was a retreat from the moral indignation Dr. Burns had expressed in December. He came down on a legalistic thing, saying, "I guess you are not required to do anything that you were not required to do before."

But we heard testimony yesterday that the banks did in fact get together in New York and that they brought pressure on the Federal Reserve and that they wanted a very clear statement that they are not legally bound to forego all of this very lucrative business in the Arab world even though they are partners in the economic warfare against Israel.

But you say that there was no pressure. It is a little unusual, however, that he comes out with this so-called clarification.

The chairman is back, so I will yield back to the chairman for the moment.

Mr. ROSENTHAL. I have no further questions. Without objection, we shall include in the record a letter, dated June 3, 1976, by Chairman Burns to myself, as chairman of the subcommittee; and a letter dated June 8, 1976, also addressed to me, as chairman of the subcommittee, from Chairman John Moss, chairman of the Oversight and Investigations Subcommittee. Both will be included in the record.

[The letters referred to follow:]

CHAIRMAN OF THE BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
Washington, D.C., June 3, 1976.

Hon. BENJAMIN S. ROSENTHAL,
Chairman, Commerce, Consumer, and Monetary Affairs Subcommittee of the Committee on Government Operations, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I appreciate your kind invitation to comment on the moral significance of the Arab boycott of Israel. The boycott raises issues of national policy that go well beyond the responsibilities of the Board of Governors, but I have no hesitation in complying with your request that I convey my personal views on this subject.

The policy of the United States, as expressed in the Export Administration Act of 1969, is to oppose boycotts imposed by foreign countries against other countries friendly to the United States. Since Israel is clearly friendly to the United States, this policy would seem to apply in the case of the Arab boycott. Congress has not seen fit, however, to prohibit United States citizens or firms from furthering or supporting such a boycott. Rather, it has stated that it is the policy of the United States to "encourage and request" domestic firms not to take any action that would give effect to a boycott against a friendly forei country.

There is a significant question in my mind whether the Congressional declaration of policy that the United States "oppose" boycotts against friendly foreign nations does not impose responsibilities upon private businesses that depend upon government licenses and privileges that are distinct from those imposed upon other businesses in which there is little or no government involvement. In December of last year the Board of Governors published a statement with respect to boycott practices suggesting that the commercial banking business—which benefits substantially from such activities of the U.S. government as the provision of deposit insurance, the operation of the Federal Reserve System, and the issuance of national bank charters—may well be viewed as a business having such special responsibilities.

It is clear to me that banks in the United States play a crucial role in giving effect to the Arab boycott in this country. It is customary for importers in the Middle East who purchase goods from U.S. exporters to arrange for payment by means of a letter of credit. Generally, a letter of credit will originate at a bank in the Middle East and will be confirmed by a correspondent bank in the United States. It is common for such letters of credit to require the exporter, as a condition of receiving payment under the letter of credit, to submit a certificate attesting to his compliance with some phase of the Arab boycott of Israel. Since the U.S. bank may not make a payment under the letter of credit unless this condition is complied with, the U.S. bank in a real sense gives effect to the boycott by agreeing to handle a letter of credit that embodies such terms.

I recognize, of course, the sovereign right of the Arab nations to limit their economic relationships with Israel in any lawful manner they choose. I am disturbed, however, by the extension of the effect of the boycott to U.S. citizens, particularly when this extension is brought about through the use of U.S. banks as intermediaries. Our banks are not only securing assurances for Arab importers that they are not buying goods of Israeli origin, but they also serve as the instrumentality whereby U.S. citizens having unrelated dealings with Israel may be denied access to the Arab market.

It is clearly within the power and authority of Congress to clarify the reach of the Export Administration Act and to define what role should be permissible for U.S. banks in matters relating to a boycott against a friendly foreign country. The Board of Governors has expressed the view, based upon its understanding of the Act, that it is improper for banks to participate in such activities, but as we view the law at present they are not prohibited from doing so. Some bankers, cognizant of the moral imperative of the Export Administration Act, have voluntarily refused to give support to the boycott, yet because of the uncertainty in this area even those banks have been put under strong pressure to process letters of credit originating in the Middle East as long as their competitors continue to do so.

The time has come for Congress to determine whether it is meaningful or sufficient merely to "encourage and request" U.S. banks not to give effect to boycott. It is unjust, I believe, to expect some banks to suffer competitive penalties for responding affirmatively to the spirit of U.S. policy, while others profit by ignoring this policy. This inequity can be cured if Congress will act decisively on the subject.

Before Congress acts, however, it should determine whether there is not another solution. In my experience with government officials and central bankers in Arab countries I have found them to be intelligent and sophisticated men, and I cannot believe that they are insensitive to the disruptive and devisive effect of these efforts to enforce the boycott through the intermediary of U.S. citizens. I would hope, therefore, that efforts to cure this problem through diplomatic and other intergovernmental channels will obviate the need for a legislative remedy.

Sincerely yours,

ARTHUR F. BURNS.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., June 8, 1976.

Hon. BENJAMIN S. ROSENTHAL,
Chairman, Subcommittee on Commerce, Consumer, and Monetary Affairs, Committee on Government Operations, Washington, D.C.

DEAR MR. CHAIRMAN: I am pleased to learn that the Subcommittee you chair has scheduled hearings on the role of United States banks in furthering or co-

operating with the Arab economic boycott against Israel. I am sure these hearings will greatly aid Congress in gaining information about this important subject.

As you know, the Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce, has been investigating the Arab boycott and other restrictive trade practices imposed on United States Commerce by foreign concerns. We are seeking to ascertain the effectiveness of Federal laws related to the boycott and whether they are being enforced, as well as to determine whether new law is needed. In this regard, we have obtained data which should be of value to your inquiry.

In May, the Subcommittee received data from the Board of Governors of the Federal Reserve System on the number of U.S. bank branches, subsidiaries and affiliates present in Israel and Arab countries for year-end 1973, 1974 and 1975. This data shows a significant increase in the number of U.S. bank branches, subsidiaries and affiliates in Arab countries has significantly increased over the past three years, while the number of U.S. bank branches, subsidiaries and affiliates in Israel has declined during the same period.

The number of U.S. bank branches in Israel has declined from 2 to 0 since the end of 1973. There are now U.S. bank branches in nine Arab countries (listed on enclosed chart). The number of U.S. bank branches in Arab countries has increased from ten to twenty-three with four new branches expected to open soon.

The number of U.S. bank subsidiaries and affiliates in Israel have increased from five to six during the last three years. However, the number of U.S. bank subsidiaries and affiliates in Arab countries have gone from four to thirteen during the same period.

The data received from the Board of Governors of the Federal Reserve Board System is covered in two charts which are enclosed. The first lists the numbers of U.S. bank branches, subsidiaries, and affiliates in the various countries over the past three years. The second chart breaks this data down in terms of the names of the various U.S. banks having branches and the names of the U.S. banks having subsidiaries or affiliates in the Middle East along with data on the amount of equity (or the percentage of ownership) of the U.S. banks in the foreign subsidiaries, as well as the type of business being engaged in at each subsidiary by each bank.

Most of the data examined by the Subcommittee has been Export Administration Act reports filed by American exporters concerning requests received to participate in boycotts. These reports were subpoenaed by the Subcommittee from the Department of Commerce. It is interesting to note that although the Export Administration Act's boycott amendments have been in existence for ten years, the Commerce Department required only exporters to file reports up until December 1, 1975, whereupon so-called service organizations such as banks, freight forwarders and insurance companies were required to file reports. Accordingly, a systematic examination of the role of U.S. banks in the boycott is more difficult.

We have found that letters of credit issued by banks, foreign and domestic, were frequently cited by exporters as a type of documents used to convey boycott requests. The type of clauses most often contained in letters of credit in 1974 and 1975 are as follows:

Origin.—Clauses concerning the origin of the products exported. This type of clause typically includes the request that the exporter certify that the goods to be shipped are not of Israeli origin, or are wholely of United States origin.

Shipping.—Clauses related to shipping goods to Israel. This type of clause typically includes the request for companies to agree, or certify, that they will not ship the goods aboard an Israeli ship or a ship blacklisted by the Arab League, or a ship which will stop at an Israeli port.

The increase in the number of U.S. bank branches, subsidiaries, and affiliates is undoubtedly attributed to the increased wealth of Arab oil producing countries following the four-fold price increase in oil prices after the Arab oil embargo. The reason for the apparent decline in U.S. banking interest in Israel cannot be readily determined, but may well be due, at least in part, to the anti-Israeli policies and practices of Arab countries in general and the Arab economic boycott in particular.

A staff report of the House Committee on Banking, Currency and Housing published last month, stated that about half of all deposits in the selected foreign banks it examined were from Organization of Petroleum Exporting Countri[illegible].

The staff report concludes in part: "As a result, the notion that the international market is a free market—or that it is even a private market—is no longer viable. It is, instead, a market which can be influenced or perhaps even dominated by political considerations in which U.S. public policy has only an indirect input."

Although these problems are largely political in nature, they also raise substantial questions concerning supervision and regulation of U.S. banks in the public interest. If one foreign country chooses to boycott another country, it is generally not the problem of the U.S. However, the Arab trade boycott has been unique in that it has sought to make U.S. banks and exporters instrumentalities of economic warfare. I am sure you agree with me that this should not be the case.

I hope you find this information of value. Please let me know if you need additional data.

Sincerely,

JOHN E. MOSS, *Chairman.*

Enclosures.

NUMBER OF U.S. BANK BRANCHES, SUBSIDIARIES, AND AFFILIATES PRESENT IN ISRAEL AND MIDDLE EAST ARAB COUNTRIES, YEAR END 1973–75

	Branches			Subsidiaries			Affiliates		
	1973	1974	1975	1973	1974	1975	1973	1974	1975
Israel	2	2	0	3	3	3	2	2	3
Arab countries in Middle East:									
Bahrain	2	2	2	0	0	1	0	0	0
Egypt	0	0	2	0	0	0	0	2	2
Jordan	0	1	1	0	0	0	0	1	1
Kuwait	0	0	0	0	0	0	0	1	1
Lebanon	3	3	3	3	4	4	1	1	2
Oman	0	0	1	0	0	0	0	0	0
Saudi Arabia	2	2	2	0	0	0	0	0	1
United Arab Emirates	3	5	10	0	1	1	0	0	0
Yemen Arab Republic	0	0	2	0	0	0	0	0	0

U.S. BANK BRANCHES, SUBSIDIARIES, AND AFFILIATES PRESENT IN ISRAEL AND MIDDLE EAST ARAB COUNTRIES, YEARS 1973–75[1]

Country	Branches		Subsidiaries/affiliates		
	Number	Bank	Institution	Investment	Equity activity
Bahrain	2	Citibank, N.A.; Chase Manhattan Bank, N.A.; Chemical Bank;[2] Bank of America N.T. and S.A.[2]	Continental Illinois National Bank & Trust Co.	Continental Bank Ltd. (1975)	50 percent banking.
Egypt	2	Citibank, N.A. (1975); Manufacturers Hanover Trust Co. (1975).	First Chicago International Corp	Misr International Bank (1974)	20 percent banking.
		Bank of America National Trust and Savings Association.[2]	Chase Manhattan Bank, N.A	Chase National Bank of Egypt	49 percent banking
Israel	2	Exchange National Bank of Chicago (both branches were closed in 1975 and sold to Japhet Bank Ltd., Tel Aviv).	Fidelity International Bank	Bank Leumi Investment Co. Ltd	0.28 percent holding company.
			First Pennsylvania Corp	FIBI Holding Co	41.60 percent holding company.
			Exchange-Israel Corp	Exchange National Bank Compensation Fund Ltd.	99 percent trust company.
				Exchange National Bank Provident Fund Ltd.	99 percent trust company.
				Exchange National Bank Trust Co. Ltd.	Do.
			Exchange National Bank of Chicago	Japhet Bank Ltd	25 percent banking.
Jordan	1	Citibank, N.A. (1974); Chase Manhattan Bank, N.A.[2]	Irving International Financing Corp	Industrial Development Bank	2.20 percent development bank.
Kuwait	0		Philadelphia International Investment	Arab Financial Consultants Co. (1974)	6 percent investment company.
Lebanon	3	Bank of America National Trust & Savings Association; Chase Manhattan Bank, N.A.; Citibank, N.A.	Chase Manhattan Overseas Banking Corp.	National Bank for Industrial and Touristic Development.	1 percent development bank.
			Chemical Bank	Chemical Bank (Middle East) S.A.L.	92.75 percent commercial bank.
			Citibank, N.A	Bank of Lebanon and Kuwait S.A.L. (1975).	35.70 percent commercial bank.
			The Fidelity Bank	Banque de la Mediteranne (1974)	80 percent commercial bank.
			First National Bank of Chicago	First National Bank of Chicago (Lebanon).	100 percent commercial bank.
			Continental International Finance Corp.	Continental Development Bank, S.A.L.	90 percent banking.
Oman	1	Citibank, N.A. (1975); Chase Manhattan Bank, N.A.[2]		None	
Saudi Arabia	2	Citibank, N.A. (minus 2)	Chase Manhattan Overseas Banking Corp.	Saudi Arabian Investment Co. (1975)	20 percent commercial bank.
United Arab Emirates	10	First National Bank of Chicago (minus 3); Citibank, N.A. (minus 7) (2 branches in 1974; 5 in 1975).	First National City Overseas Investment Corp.	Citicorp Gold Finance Ltd. (1974)	100 percent credit agency.
Yemen Arab Republic	2	Citibank, N.A. (1975) (minus 2)		None	

[1] Operations or stock interests predate 1973, except as noted

[2] Approved but not opened.

Mr. ROSENTHAL. Mr. Drinan, you may go ahead.

Mr. DRINAN. I want to thank you for your statement, Mr. Hawke. You say, and I suppose it is very clear, that the administration and the law make the Commerce Department the principal enforcer of whatever obligations the Congress has insisted upon.

But it is my impression, and I think the impression of other people on this subcommittee and on other subcommittees in the House, that the administration has no overall policy and that the Commerce Department has gone both ways. Rogers Morton, the former Secretary of Commerce, stated very categorically that in his judgment the law allows the Commerce Department to make a regulation that would make unlawful and illegal all submission to the economic boycott of the Arabs.

That has not been carried out; there has been no regulation like that. And yesterday a gentleman from the Commerce Department refused to say what Elliot Richardson will disclose this Friday to a particular subcommittee.

Do you have any thoughts on what the posture of the administration is?

Mr. HAWKE. If the Commerce Department had adopted such a regulation, as my testimony indicates, I believe the Board would have the legal powers to enforce that policy with respect to banks.

I am not really in a position to talk about administration policy. The Board's actions, with respect to the boycott, have been taken by the Board completely independently of any administration action on the matter. There is really nothing I can add on that.

Mr. DRINAN. Has there been discussion at the highest levels of the Federal Reserve about the ineffectiveness of existing law and regulations to curb the participation of hundreds of corporations and most of the major banks in the economic boycott?

Mr. HAWKE. The only discussion that we have had has related to the Board's authority to take action under existing law and policy with respect to banks. It related principally to the question of the enforcement by banks of these boycott provisions in letters of credit. It is this letter of credit practice that I have described which is really the only indication that we have of banks' giving effect to the Arab boycott at all.

Mr. DRINAN. Mr. Hawke, it is not the only indication. You have banks growing in the Arab world and you have American banks pulling out of Israel. So it is not right to say that is the only indication that you have.

Mr. HAWKE. We have no indication, or at least I have no indication, that the reasons for the U.S. banks' terminating their branches in Israel had anything to do with the boycott. It may well have.

Mr. DRINAN. It is self-evident that it did. But aside from that, does the Federal Reserve express some uneasiness that the banks that it seeks to regulate by law are engaged in this vast importation of $15 billion of petroleum money and that they have all of these clauses attached? Covertly or overtly or directly or indirectly, the economic warfare against Israel goes on with the aid and assistance of American banks, which the Federal Reserve is licensed to regulate.

Mr. HAWKE. I cannot really answer that, Congressman.

Mr. DRINAN. Has no moral philosophising gone on?

Mr. HAWKE. There has been a lot of consideration, I am sure, by our Banking Supervision Division and our International Finance Division as to the implications of the inflow of Arab money. As yet, those issues have not presented legal issues that have come before the General Counsel's Office.

Mr. DRINAN. And no one has brought this up over the past several years? It is not a new problem. The Arab boycott goes back to 1949. And the banks did then what they are now doing. They are doing it more now because there is more money involved.

But to the best of your knowledge, this has never been an issue before the Federal Reserve?

Mr. HAWKE. There has been no occasion since I have been at the Board for the Board to discuss it as such. It may well be a subject of discussion at the staff level and among members of the Board. It has not to my knowledge presented an issue for decision by the Board in the last year.

Mr. DRINAN. But in Congress there is a moral ferment as to what we should do to improve and to strengthen the Export Administration Act. Is that moral ferment present also in the Federal Reserve?

Mr. HAWKE. I think the Board's statement of December 12 is one of the strongest statements made by any Government agency with respect to the moral aspects, if you will, of the participation by banks in the boycott. That statement indicated that because of the Federal benefits that banks enjoy—Federal Deposit Insurance, membership in the Federal Reserve, and so on—the moral implications of U.S. policy, as expressed in the Export Administration Act, have more significance for banks than for unregulated enterprises. And that position was reiterated in Chairman Burns' letter of June 3. So to that extent, it has been present.

Mr. DRINAN. I commend you if you were involved in the preparation of that letter of December. It is one of the finest statements of any agency. But I somewhow have the feeling that the Agency did not follow through and neither applied the legal weapons that it had, nor requested the legal weapons that it would need. What do you think of the inference that I draw?

Mr. HAWKE. I think that we have all of the legal weapons that we need to deal with any practices that are violative of U.S. law or regulations. The problem is that we are being looked to to invoke powers against banks to terminate practices that do not violate U.S. law or regulations.

Mr. DRINAN. You don't have any legal powers, as you said in your paper, to do anything about the economic boycott.

Mr. HAWKE. Our view of the various statutes that give the Board power to adopt regulations and to institute enforcement proceedings is that we do not have the authority to take actions against banks with respect to boycott practices that do not discriminate against U.S. citizens or firms on the basis of race, religion or national origin.

Mr. DRINAN. Why do you not ask for that power?

The moral indignation of that letter of December 12 was encouraging. And I thought that maybe with Mr. Ford's leadership in what he had enunciated in November of 1975 that something would happen. But then it all faded away.

And now you are here on June 9, as General Counsel of the Federal Reserve System, and you say you do not have any legal powers. But you do not give any indication that anyone at the Federal Reserve would like to have those legal powers so that you could stop the participation of all of these banks you regulate in something that is very insidious.

Mr. HAWKE. All I can say, Congressman Drinan, is that it is not a question of legal power, in my view. It is a question of whether the underlying conduct of the banks is something that the Congress of the United States and those in the executive branch who have authority to implement the Export Administration Act see fit to prohibit.

We have ample power to deal with prohibited conduct. I do not think it is a question of power; it is a question of whether the underlying conduct is deemed to be prohibitable.

Mr. DRINAN. This is 10 years old now. And we say that it is the policy of the United States to oppose restrictive trade practices and to encourage and request domestic concerns not to engage in these.

Why doesn't the Federal Reserve say, "We do not have to wait for the moment when Congress absolutely prohibits it."

We made it very clear 11 years ago that we want the banks under the regulation of the Federal Reserve to oppose these things. And you are supposed to be encouraging and requesting these banks not to submit to these things. You are not doing that.

Mr. HAWKE. I think that is exactly what our December 12 statement did. It passed on the encouragement and request of the Congress and the Department of Commerce that the banks not participate. And it did it in quite emphatic terms. But we cannot institute legal proceedings if someone does not take up that encouragement and does not concur with that request.

So the underlying problem, as we see it, is not a question of power; it is a question of whether the substantive prohibitions are going to be imposed on banks.

Mr. DRINAN. If you, in the name of the Federal Reserve, wrote a very fine statement saying that we need additional legal power from the Congress, that Congress would enact such power within a fortnight.

Mr. HAWKE. Again, I can just repeat. I think that the question you are really asking is a foreign policy question. It is a question of whether the participation of banks in boycott practices should be prohibited as a matter of U.S. foreign policy.

We have ample powers to deal with violations of law, but we are not charged with the responsibility for adopting or implementing foreign policy of the United States.

Mr. DRINAN. You are a good lawyer and you stay with the law. I suppose we should be asking Dr. Burns if he wants or needs this. But in any event, I thank you for your statement. It has been very helpful.

Mr. ROSENTHAL. I have one question. Have there been any meetings of the banking regulatory agencies: yourself, FDIC, the Comptroller, the Home Loan Bank Board, and others, to decide how you are going to deal with this issue?

Mr. HAWKE. Mr. Chairman, before the President's statement came out last year, we did have a meeting at the White House with Mr. Hills

and representatives of the other banking agencies. We discussed the letter of credit question at that time. We had already begun to work on a response for the Board on the letter of credit issue. And after our statement came out in December, we have not had any further discussions with those agencies.

Mr. ROSENTHAL. You had no further meetings to decide how to deal with this issue? As you said in the December letter, it is a heinous practice they are engaged in. But that doesn't mean beans because it has had no impact whatsoever.

Mr. HAWKE. I think it has had some impact, Mr. Chairman. We have gotten indications that there are many banks that are refusing to participate.

Mr. ROSENTHAL. What banks?

Mr. HAWKE. I cannot name them.

Mr. ROSENTHAL. How many banks are there in the United States?

Mr. HAWKE. 14,000.

Mr. ROSENTHAL. How many banks have refused to issue letters of credit with these restrictive provisions?

Mr. HAWKE. There are only relatively few banks that——

Mr. ROSENTHAL. How many? Do you know?

Mr. HAWKE. No; I cannot give you an answer.

Mr. ROSENTHAL. Would you speculate?

Mr. HAWKE. I really cannot even speculate.

Mr. ROSENTHAL. I think it is three; 3 out of 14,000. So did your letter have much impact?

Mr. HAWKE. There are relatively few banks that are engaged in the letter of credit business in the first place. It is only the larger money center banks that are financing export transactions.

Mr. ROSENTHAL. How many of those refused?

Mr. HAWKE. As far as I know, the big New York banks are continuing to process letters of credit.

Mr. ROSENTHAL. And that was after Mr. Volcker came down to see the Federal Reserve Governors.

Mr. HAWKE. It was both before and after President Volcker sent his letter requesting verification.

Mr. ROSENTHAL. That is all. The subcommittee stands adjourned. Thank you.

[Whereupon, at 11:33 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIXES

Appendix 1.—Letters of December 12, 1975; January 12, 1976; and January 20, 1976

Board of Governors of the Federal Reserve System,
Washington, D.C., December 12, 1975.

To the Presidents of all Federal Reserve Banks and offices in charge of branches.

On November 20, 1975, the President announced a number of actions intended to provide a comprehensive response on the part of the Federal Government to any discrimination against American citizens or firms that might arise from foreign boycott practices. Two elements of the President's announcement relate to the possible involvement of commercial banks in such practices:

First, the President has directed the Secretary of Commerce to amend regulations under the Export Administration Act to prohibit U.S. exporters and "related service organizations" from answering or complying in any way with boycott requests that would cause discrimination against U.S. citizens or firms on the basis of race, color, religion, sex or national origin. The term "related service organizations" is defined to include banks. Accordingly, banks that become involved in a boycott request related to an export transaction from the U.S. will be required to report any such involvement directly to the Department of Commerce.

Second, the President has encouraged the Board of Governors and the other Federal financial regulatory agencies to issue statements to financial institutions within their respective jurisdictions emphasizing that discriminatory banking practices or policies based upon race or religious belief of any customer, stockholder, employee; officer or director are incompatible with the public service function of banking institutions in this country.

The Board of Governors strongly supports the President's statement in this regard. Banking is clearly a business affected with a public interest. Banking institutions operate under public franchises, they enjoy a measure of governmental protection from competition, and they are the recipients of important Government benefits. The participation of a U.S. bank, even passively, in efforts by foreign nationals to effect boycotts against other foreign countries friendly to the United States—particularly where such boycott efforts may cause discrimination against United States citizens or businesses—is, in the Board's view, a misuse of the privileges and benefits conferred upon banking institutions.

One specific abuse that has been called to the attention of the Board of Governors is the practice of certain U.S. banks of participating in the issuance of letters of credit containing provisions intended to further a boycott against a foreign country friendly to the U.S. The practice appears to have arisen in commercial transactions between U.S. exporters and foreign importers, in which the importer has arranged for the issuance of a bank letter of credit as a means of making payment to the exporter for the goods he has shipped. In some cases the importer has required, as one of the conditions that must be satisfied before payment can be made by the U.S. bank to the exporter, that the exporter provide a certificate attesting that it is not connected in any way with a country or firm being boycotted by the importer's home country, or is otherwise in compliance with the terms of such a boycott. Such provisions go well beyond the normal commercial conditions of letters of credit, and cannot be justified as a means of protecting the exported goods from seizure by a belligerent country. Moreover, by creating a discriminatory impact upon U.S. citizens or firms who are not themselves the object of the boycott such provisions may be highly objectionable as a "secondary" boycott.

While such discriminatory conditions originate with and are imposed at the direction of the foreign importer who arranges for the letter of credit. U.S. banks that agree to honor such conditions may be viewed as giving effect to, and thereby becoming participants in, the boycott. The Board believes that even this limited participation by U. S. banks in a boycott contravenes the policy of the United States, as announced by the President and as set forth by Congress in the following declaration in the Export Administration Act of 1969 (50 U.S.C. App. § 2402(5)):

"It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States, and (B) to encourage and request domestic concerns engaged in the export of articles, materials, supplies, or information, to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against another country friendly to the United States."

The Board also notes that the agreement by a U.S. bank to observe such discriminatory conditions in a letter of credit may constitute a direct violation of the Federal antitrust laws or of applicable State anti-boycott laws.

You are requested to inform member banks in your District of the Board's views on this matter, and, in particular, to encourage them to refuse participation in letters of credit that embody conditions the enforcement of which may give effect to a boycott against a friendly foreign nation or may cause discrimination against U.S. citizens or firms.

Very truly yours,

THEODORE E. ALLISON, *Secretary.*

FEDERAL RESERVE BANK OF NEW YORK,
New York, N.Y., January 12, 1976.

BOARD OF GOVERNORS,
Federal Reserve System,
Washington, D.C.

SIRS: Reference is made to the Board's letter of December 12, 1975 regarding the involvement of banks in boycott requests related to export transactions from the United States. That letter, which discusses, among other things, the practice of certain United States banks of handling letters of credit containing provisions intended to further boycotts against foreign countries friendly to the United States, has elicited numerous questions from member banks in this District. In responding to these questions. some clarification of the intent of the Board seems to us important.

We believe that it is clear from the Board's letter and otherwise that bank participation in export transactions, including handling of letters of credit, which discriminate against United States citizens or firms on the basis of race, color, religion, sex, or national origin, is prohibited under the November 1975 regulations of the Commerce Department implementing the Export Administration Act. Also, participation by United States firms in economic boycotts against friendly foreign nations is at variance with the policy of the United States as expounded by Congress, and requires reports of any such involvement to the Commerce Department. While it is our understanding that the Board's intention was not to impose further obligations more severe than those imposed by Commerce regulations on all U.S. firms, it is that point that, we feel, requires further clarification, and we would appreciate the Board's confirmation of our understanding.

Sincerely yours,

PAUL A. VOLCKER, *President.*

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
Washington, D.C., January 20, 1976.

The Federal Reserve Bank of New York has informed the Board that several member banks in the Second District have requested clarification of the Board's letter of December 12, 1975, concerning the involvement of banks in foreign boycott practices. Specifically, these banks have asked whether it was the Board's intention to impose legal obligations upon member banks with respect to boycott practices that differ from those already imposed upon banks by the Department of Commerce regulations issued under the Export Administration Act.

The Commerce Department's Export Administration Regulations (15 C.F.R. Part 369), as amended effective December 1, 1975, deal in two ways with the subject of restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States. First, those regulations prohibit exporters and related service organizations, including banks, from taking any action that has the effect of furthering or supporting such a restrictive trade practice where the practice may discriminate against U.S. citizens or firms on the basis of race, color, religion, sex or national origin. Second, even where the restrictive trade practice does not have such a discriminatory effect upon U.S. citizens or firms, the Commerce Department regulations encourage and request exporters and related service organizations, including banks, to refuse such a practice. In either case—that is, whether the restrictive trade practice is discriminatory against U.S. citizens or in furtherance of an economic boycott against a country friendly to the U.S.—firms that are requested to take action that would have the effect of furthering or supporting such a restrictive trade practice or boycott are required to report the request to the Office of Export Administration of the Commerce Department.

Primary responsibility for implementing and enforcing U.S. policy in this area rests with the Department of Commerce. The purpose of the Board's December 12 statement was to direct the attention of member banks to this policy, as well as to the possible applicability of other laws, including Federal antitrust laws. It was not intended to create new legal obligations for banks, but rather to ensure that they are familiar with their existing obligations under the Export Administration regulations and other pertinent laws. The Commerce Regulations are based on the following declaration in the Export Administration Act of 1969:

"It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States, and

(B) to encourage and request domestic concerns engaged in the export of articles, materials, supplies, or information, to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting the restrictive trade practices of boycotts fostered or imposed by any foreign country against another country friendly to the United States."

The Board expects that member banks will give serious and good faith consideration to U.S. policy, as just noted. The Board also expects that member banks will fully comply with those portions of the Commerce Department regulations that are mandatory. Furthermore, the Board fully supports the Commerce Department regulation that encourages and requests exporters and their banks not to participate in boycott practices.

Very truly yours,

THEODORE E. ALLISON, *Secretary.*

Appendix 2.—Statement of Joseph F. Lisa, Member of New York State Assembly

The Assembly,
State of New York,
Albany, June 30, 1976.

Congressman Benjamin Rosenthal,
House of Representatives,
Washington, D.C.

Dear Congressman Rosenthal: Enclosed please find my statement for submission to the record of your Subcommittee's recent hearing on "Bank Compliance with the Arab Boycott." I regret that my legislative duties, particularly in regard to reopening CUNY, precluded me from testifying. Please express my thanks to the members of the Subcommittee for permitting me to submit a written statement.

I applaud your efforts to seek stronger Federal Anti-Boycott legislation and look forward to working with you toward this goal.

I would be pleased to meet with you at a mutually convenient time to discuss this matter of great importance to all New Yorkers.

With warm regards, I remain

Sincerely,

Joseph F. Lisa.

Enclosure.

Statement of Joseph F. Lisa, Member of the New York State Assembly

Mr. Chairman, members of the Committee, I am Assemblyman Joseph F. Lisa, Chairman of the New York State Assembly Standing Committee on Governmental Operations and its Subcommittee on Human Rights. In that capacity I had the privilege of sponsoring Chapter 662 of the New York Laws of 1975, our nation's first State law making discrimination by means of boycott or blacklist unlawful. In my opinion, New York's response in acting to protect its citizens was prompted by the absence of Federal action.

In November 1975, the Subcommittee on Human Rights commenced a study into the effect of the so-called Arab Boycott on the activities of individuals and institutions in New York State. Representatives of five major New York banks testified at a Public Hearing before the Subcommittee on February 5 and 6, 1976. The testimony adduced at said hearing revealed that some major New York banks actually participate in the enforcement of the restrictive blacklist conditions as dictated by the Arab Boycott.

Banks process letters of credit financing transactions for Arab importers which often contain restrictive blacklist provisions as a condition precedent for payment to domestic exporters. One particularly obnoxious condition is that the exporter must certify that goods or parts thereof are not supplied by a company whose name appears on the blacklist as compiled by the Arab Boycott of Israel Office in Damascus, Syria.

Although the banks require certificates of compliance with the terms of the letter of credit, they alleged that their role is merely a clerical and perfunctory function and takes place without passing judgment on the merits of the conditions. Therein the banks claim to enforce the terms of the letter of credit in a pro forma manner and perceive themselves as a disinterested middleman between the exporter and importer. In fact, the banks further allege that they do not confirm the veracity of certificates submitted by the domestic exporters.

On December 1, 1975, the U.S. Department of Commerce revised its regulations to prohibit U.S. exporters and banks from taking any action on restrictive boycott practices which would discriminate against citizens on the basis of race, creed, color, national origin or sex. Therefore, this requirement appears to place a responsibility on the banks to screen the conditions and terms of letters of

credit. However, the examples of discriminatory conditions stated in Sec. 369.1(5) of the U.S. Commerce Department's Regulations are limited to the blatant and obviously discriminatory provisions which clearly refer to a person's religion or national origin.

In addition, the Export Administration Regulations' requirement that banks report restrictive boycott provisions to the Department of Commerce apparently does not inhibit the banks from enforcing blacklist provisions. As a matter of fact, banks continue to enforce conditions of letters of credit which provide that the exporter must certify that goods or parts thereof are not supplied by a company whose name appears on the blacklist of the Arab Boycott of Israel Office. I find it personally offensive that the banks facilitate a process whereby a foreign government precludes an American company from doing business with other American companies which happen to be on the blacklist.

I also question whether the Arab blacklist itself is compiled solely on the basis of economic support of Israel, as opposed to religious, ethnic and/or national origin considerations. When the banks testified before my Subcommittee, they had no knowledge of whether religious discrimination was a criteria for a person or firm to be placed on the Arab Blacklist. They relied solely on a statement made by Under Secretary of Commerce James A. Baker on December 11, 1976, before Congress that: "The Arab Boycott against Israel is not intended under its governing principles to discriminate against American firms on religious or ethnic grounds. Since the inception of the Boycott reporting requirement in 1965 over 50,000 transactions involving a boycott related request have been recorded. Of these, only 25 instances have been reported where the request apparently involved such discrimination."

I suggest that this Committee ascertain from the Commerce Department the present governing principles of the Arab Boycott. Over 1,500 corporations, institutions and individuals are on the Arab blacklist, and many of these have very strong ties to New York State. Many persons and firms on the blacklist have no connection with the State of Israel and, therefore, the purely economic principles for the Arab Boycott are suspect. The fact that a person or firm is on the blacklist appears to be a result of a religious, ethnic or national origin criteria rather than the "economic principles concept" urged upon us in the "Baker Theory."

The Hong Kong Shanghai Bank testified at the February Hearing and informed the Subcommittee on Human Rights that as of January 1, 1976, the effective date of New York's Anti-Boycott Law, it would no longer process letters of credit which contained blacklist conditions. This is significant because it shows that there is no unanimous opinion amongst the members of the New York banking community that processing boycott or blacklist restrictions in letters of credit would not be subject to the unlawful discrimination provisions of the State's new Anti-Boycott law.

Another point raised at the February Hearing was the way New York banks reacted to the December 12, 1975, letter to member banks in the Federal Reserve System by Theodore E. Allison, Secretary to the Board of Governors of the Federal Reserve System. That letter stated in pertinent part that "In some cases, the importer has required that one of the conditions that must be satisfied before payment must be made by the U.S. bank is that the exporter provide a certificate attesting that it is not connected in any way with the country or firm being boycotted by the importer's home country, or otherwise in compliance with terms of such a boycott. Such provisions go well beyond the normal commercial conditions of letters of credit, and cannot be justified as a means of protecting the exported goods from seizure by a belligerent country. Moreover, by creating a discriminatory impact upon U.S. citizens or firms who are not themselves the objects of the boycott, such provisions may be highly objectionable as a 'secondary boycott.'" The letter further states that, "The Board also notes that the agreement by a U.S. bank to observe such discriminatory conditions in a letter of credit may constitute a direct violation of the Federal anti-trust laws or of applicable State Anti-Boycott law."

This letter from the Federal Reserve Board was much stronger than the Commerce Department regulations issued about two weeks earlier. One bank counsel told the Subcommittee that such Federal Reserve requests are considered the equivalent of a mandate. It obviously urged banks to refrain from any participation in boycott letters of credit transactions irrespective of whether they were based on race, creed, color, national origin or sex. We further learned that cl

lectively the banks asked the Federal Reserve Bank of New York to see if it were possible to obtain a clarification as to the intent of the letter.

On January 20, 1976, the Federal Reserve Board wrote to member banks, "The purpose of the Board's December 12 statement was to direct the attention of member banks to this policy as well as to the possible applicability of other laws including Federal anti-trust laws. It was not intended to create a new legal obligation for banks, but rather to insure that they are familiar with existing obligations under the Export Administration regulations and other pertinent laws."

When the First National City Bank was asked by the Special Counsel to the Subcommittee, "Was the purpose of going to the Federal Reserve System in order to get them to change the December 12 letter sufficiently so that you would continue to handle the certifications?", the response was, "Yes, sir." (See: N.Y.S. Assembly Subcommittee on Human Rights' Hearings Transcript, February 6, 1976, at page 362.)

This is significant because it shows that certain New York banks made a collective and concerted effort to reverse the Anti-Boycott position taken by the Federal Reserve Board in its December 12 letter. Obviously the New York banks have not been as concerned with opposing the imposition of a blacklist by a foreign government against other American companies as they have in taking steps to insure the propriety of their participation in such a practice.

The banks' participation with the secondary aspects of the Arab Boycott should be prohibited. The banks clearly indicated that they will observe the letter of the law. Presently, the Federal law is particularly lax in meeting the United States' declared policy to oppose foreign boycotts against any country friendly to the United States. The absence of strong enforcement of this policy has fostered a foreign boycott which is directed not only against a country friendly to the United States, but also against American citizens, corporations and institutions.

The banks conveniently hide behind a Department of Commerce Under Secretary's statement that the principles of the Arab Boycott and blacklist are not intended to discriminate against United States citizens. The Baker statement is obviously being used by certain banks as an "affirmative defense" against the application of New York's law prohibiting discrimination by means of boycott and blacklist.

We cannot talk about bank compliance with the Arab Boycott unless we focus on the Federal government's compliance with the Arab Boycott. The Federal government has established the legal parameters which permit the banks to play a crucial role in enforcement of the Arab Boycott. The Federal laws must be strengthened to combat this scourage on our free enterprise system and of discrimination against United States citizens.

Federal laws must be enacted to prohibit any United States citizen or business concern, including banks, from refusing to do business with any other person or domestic business concern because the latter is on a discriminatory blacklist, be it foreign or domestic. In addition, domestic concerns, including banks, should be prohibited from processing, or executing any contracts, letters of credit or other financing practices which contain restrictive blacklist conditions. Violation of such laws must be subject to substantial civil penalty and suspension or revocation of export privileges.

Also, the public must be fully informed of the impact of a foreign boycott and should have access to all records and reports filed pursuant to the Export Administration Act.

One major difference between New York's Anti-Boycott Law and the Export Administration Act is that an individual aggrieved party has an independent right of action. The Federal law must be amended to provide a right of action for an aggrieved party to enforce the provisions of the Export Administration Act. We can no longer tolerate enforcement solely by an administrative agency which has been lax in opposing the Arab Boycott and its blacklist of United States companies.

Mr. Chairman and members of the Committee, you are to be applauded for your interest in strengthening Federal Anti-Boycott laws, thereby affording dignity and protection to all of our citizens. A stronger Federal policy will clearly announce that there is no safe harbor in this country for compliance with foreign boycott and blacklists against American citizens and firms.

Thank you for the courtesy of permitting me to submit this statement into the record.

Appendix 3.—NASD Study

Report to the Securities and Exchange Commission by the National Association of Securities Dealers, Inc., Concerning the Arab Boycott

Background and Overview

On July 31, 1975 an investigation was initiated by the Association into the nature and extent of the Arab Boycott and its effect, if any, on business practices of NASD members, particularly as they relate to the formation of syndicates for the distribution of new issues. Of particular interest were the following offerings:

1. *Republic of Iceland*—(12/12/74).—First Boston (Europe) Ltd. and Kuwait International Investment Company;
2. *Sumitomo Chemical Company Ltd.*—(4/17/75).—Credit Suisse White Weld Ltd. and Kuwait International Investment Company;
3. *Alusuisse International N. V.*—(6/11/75).—Credit Suisse White Weld Ltd. and Kuwait International Investment Company;
4. *Asahi Chemical Industry Company Ltd.*—(1/22/75).—Dillon Read & Co., Inc. and Kuwait Investment Company; and
5. *Beneficial Finance International Corporation*—(7/17/75).—Blyth Eastman Dillon International Ltd. and Kuwait International Investment Company.

The dates reflected on the prospectuses are indicated in parentheses. Also shown are the NASD members or their foreign affiliates who acted as managers with Arab League related co-managers (Exhibit 1).

The NASD member firms whose involvement or whose affiliates' involvement as manager in the offerings of concern are the following: (1) White, Weld & Co., Incorporated; (2) Blyth Eastman Dillon & Co., Incorporated; (3) Dillon, Read & Co., Inc., and (4) The First Boston Corporation.

Of the four managers responsible for the five offerings (Credit Suisse White Weld Ltd. managed two) only Dillon Read & Co., Inc. used the facilities of its domestic corporation. The other three managers were foreign affiliates of NASD members, owned 100 percent in the case of Blyth and 75 percent in the case of First Boston. As for White, Weld & Co., Incorporated, they are 30 percent owned by the foreign entity, Credit Suisse. Of the five issuers, only Beneficial Finance is a U. S. corporation. All five were off-shore offerings exempt from registration under the 1933 Act.

The Association's investigation into this question of possible effects of the Arab Boycott was formulated following the establishment by the SEC of a base of some 36 syndicate offerings that included an Arab firm for which tombstone advertisements appeared in the Wall Street Journal during the period from June, 1974 to June, 1975. All of these offerings were exempt from registration under the 1933 Act and not required to be filed with either the Commission or the Association. In addition, the NASD Corporate Financing Department reviewed all offerings filed with it for the one year period June, 1974 to June, 1975, aggregating approximately 500 offerings. No indications of Boycott activity were discerned.

Also, as was previously reported elsewhere, the Association's Committee on Corporate Financing met on February 28, 1975 to discuss a reported problem related to the so-called Arab Boycott. The Committee members collectively agreed that it knew of no instance of anyone attempting to enforce an Arab Boycott in an underwriting and felt the matter had been blown out of proportion. However, it believed the NASD should monitor the problem and if violations were found to exist that the NASD should take appropriate action.

The monitoring function was in part assigned to the Corporate Financing Department since it reviews most of the registered public offerings filed with the Securities and Exchange Commission. In its routine examinations of public offerings, the Corporate Financing Department staff has been instructed to review

for evidence of apparent abuse in this area. In addition, on June 13, 1975 a memorandum was sent to all District Offices advising of the Boycott problem and requiring that any situations wherein an Association member is found to be cooperating with such activity be reported immediately to John E. Pinto, Jr., Director, Department of Enforcement, who would thereafter assume responsibility for investigating the matter (Exhibit 2). Tombstone advertisements appearing in financial publications involving Arab controlled underwriters are also forwarded to the Department of Enforcement for further investigation. Thus, the Association is reviewing offerings on a continuing and on-going basis for indications of Boycott activity.

In any event it was determined that the aforementioned five offerings would form the base for the NASD's investigation of the Boycott since there did not appear to be any easily-available alternative method of further identifying offerings which may have been influenced by it. Also, although the number of Arab firms participating in the numerous other offerings reviewed by the Commission and NASD's Corporate Financing Department are considerable, the following have been identified as the most active: (1) Kuwait International Investment Company; (2) Kuwait Investment Company; (3) Kuwait Foreign Trading and Contracting Company; and (4) Alahla Bank.

Preliminary informal conversations with interested members of the underwriting community, including those NASD members involved as managers of these offerings (or whose foreign affiliates so acted), elicited a paucity of concrete facts and the only conclusion reached at the time was that there was much confusion about the origin, intent, application, implementation and effect of the Boycott. As is described in detail subsequently in this report, some have referred to the Boycott in religious and ethnic terms and point to the inclusion of Salomon Brothers and Goldman, Sachs & Co. in Arab managed deals as an indication of its ineffectiveness. On the other extreme there are those who see it as a "trading with the enemy act," that is, purely political in nature, imposed only with respect to companies that engage in business with the State of Israel or aid or comfort it in other ways. Such persons generally propose that 90 percent of the names on the Boycott list have no religious or ethnic connotation (Ford Motor Company, Motorola, RCA, et al.). Representatives of the Kuwaiti Mission to the United Nations in New York, the Kuwaiti Embassy in Washington, D.C. and the Arab League Information Center in Washington, D.C. will not admit to being in possession of or having access to the Boycott list. Others have been queried about the list and have given similar replies. In response to a written inquiry, the Commissioner General of the Office of the Boycott of Israel, Damascus, Syria, reported under date of August 31, 1975 that the Boycott list could not be made available to NASD and enclosed a five-page apology in support of the Boycott generally. There does seem to be general agreement, however, among those spoken to that at least the following investment bankers appear on the list: (1) Lazard Freres & Co., New York; (2) Lazard Freres et Cie, Paris; (3) Banque Rothschild, Paris; (4) N. M. Rothschild and Sons, London; and (5) S. G. Warburg & Co, Limited, London.

On the question of implementation of this Boycott, reference was made to the fact that Warburg Paribas Becker Inc., New York City, a domestic corporation and NASD member, which is 25 percent owned by S. G. Warburg, has participated in Arab co-managed deals, including some of those under review here and that New Court Securities Corp., New York City, also a domestic corporation and NASD member, 80 percent owned by Arcan N. V. which is a holding company for five European banks controlled by the Rothschild family, also participated in Arab co-managed offerings, including some of those under review here. It was reported that in March, 1975 Hill Samuel Securities Corporation, New York City, a domestic corporation and NASD member, was removed from the Boycott list and appeared as a participant in four of the five offerings under our current review. An inquiry directed to Hill Samuel, which is wholly-owned by Hill Samuel & Co. Limited (U.K.), confirmed that the firm was once on the Boycott list but was removed sometime in 1974. Hill Samuel has not set forth any reasons for such removal.

The nature of the Arab Boycott has been represented by the League of Arab States to be a preventive and defensive measure in that its purpose is to protect the security of the Arab States from the danger of Zionist policies, prevent the domination of Zionist capital over Arab economics and to prevent expansion at the expense of the interests of the Arabs. The Boycott has been compared by

others to the recently rescinded Protocol between members of the Organization of American States (OAS) whereby Cuba was boycotted by the signatory states.

As set forth in the investigative section of this report, the Boycott is highly selective in nature. A substantial percentage of the companies whose names supposedly appear on the Boycott list have no Jewish connotations, while there are several specific situations highlighted wherein Arab companies are doing business with entities having clearly-evident Jewish affiliations.

During the course of the investigation it was determined that the U.S. Department of Justice in the spring of 1975 issued to certain investment bankers including White Weld & Co. and Dillon, Read & Co. a Civil Investigative Demand which sought to develop information on the Boycott and which referred to possible violation of the provisions of Title 15 U.S. Code Sections 1 and 2[1] by reason of "Group boycotts and other agreements in restraint of trade." It has also been determined that the New York Attorney General had investigated the matter in the spring of 1975. A press release dated September 11, 1975 from the New York Attorney General reports the preparation of an interim report on the Boycott and certain recommendations having to do with the preparation and maintenance of records relative to new offerings. NASD was advised that the interim report, which does not identify investment bankers by name, has not been and will not be released by the New York Attorney General's Office.

The next segment of this report will entail a detailed description of the Association's investigative efforts into determining the existence and extent of the Arab Boycott as it relates to the investment banking community. It has been prepared in such a manner as to reflect the sequence of events as they happened. on a firm-by-firm basis, in order to more clearly set forth the flow of the investigation. This section is followed by the conclusions drawn based upon the factual findings of the investigation.

FINDINGS AND CONCLUSIONS

It appears from the record developed in this investigation that the Arab Boycott is designed to counter Zionist activities and is not directed to the entire spectrum of the Jewish community, i.e., it is not based upon religious or ethnic considerations. This conclusion is demonstrated by the fact that while boycotting specific investment banking firms such as S. G. Warburg, N. M. Rothschild, etc., Kuwait Investment Company and Kuwait International Investment Company have joined syndicates which include Goldman Sachs, Salomon Brothers, and many other firms which can be readily identified with Jewish interests.

It would also appear that as the strength and influence of the Arabs increased the effect and impact of the Boycott became more and more apparent. This is evidenced by the fact that in January, 1974 Kuwait Investment Company joined with Merrill Lynch Pierce Fenner & Smith, Inc. and S. G. Warburg & Co. Ltd. in the management of Eurofima and managed with Merrill Lynch a distribution of Finnish Municipalities which included as underwriters not only Warburg, but also N. M. Rothschild & Sons Ltd. In May of 1974 Kuwait Foreign Trading joined with Merrill Lynch in managing a distribution of British Columbia bonds which included as an underwriter Lazard Freres & Co. However, on November, 13, 1974 Kuwait Investment Company rejected S. G. Warburg & Co. Ltd., N. M. Rothschild & Sons Ltd., and Lazard Freres et Cie as underwriters in the Asahi Chemical distribution and in February, 1975 Kuwait International Investment Company withdrew as manager with Merrill Lynch of the Mexico and Volvo deals when Merrill refused to drop Lazard New York, Lazard Paris, N. M. Rothschild and Warburg London.

It has been established that Merrill Lynch did not accommodate the Arab bankers in connection with the Mexico and Volvo deals nor did Blyth Eastman Dillon exclude firms it planned to include in its syndication of Mexicanos Petroleos in order to satisfy Arab demands.

No evidence was uncovered that The First Boston Corporation was involved in any Boycott activity. As for the other three NASD members who appeared (or

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[1] Title 15 U.S. Code:
Section 1—*Trusts, etc. in restraint of trade.*—"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal * * *" (page 5)
Section 2—*Monopolizing trade a misdeameanor.*—"Every person who shall monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *" (page 391)

whose foreign affiliates appeared) as underwriters of the issues subject to this investigation (Dillon Read, Blyth and White Weld), it is apparent that a solution was found for accommodating both the Arabs and the targeted Boycott firms as well, this being the process of substitution.

In the case of Credit Suisse White Weld Limited, there is no definitive proof that it utilized these procedures, although the characteristics of the Sumitomo and Aluisse offerings are precisely the same as those which were conclusively determined as having been subject to a boycott and for which the substitution process had been implemented. Certain telexes would tend to support this position.

With respect to the remaining two members, Blyth Eastman Dillon & Co. Incorporated and Dillon Read & Co., Inc., there is clear and unequivocal proof demonstrating that the Arab Boycott has played a major role in their organization of syndication groups. Blyth Eastman Dillon, through its international entity, underwrote Beneficial Finance Corporation and at the direction of Kuwait International Investment Company, the co-manager, excluded S. G. Warburg and N. M. Rothschild from the deal, but substituted their American affiliates, Warburg Paribas Becker Inc. and New Court Securities Corporation respectively. Officers of Blyth readily admit to having made this substitution and documents obtained from a review of their files substantiate this. Counsel to Blyth raised questions as to the validity of any potential NASD allegation that Blyth conducted itself in a manner inconsistent with just and equitable principles of trade and made arguments against any such violation.

Dillon Read & Co., Inc., the NASD member, likewise found a means of circumventing the Boycott while accommodating both sides of the conflict. Dillon has readily admitted this fact to the Association as well as in its submission to the Department of Justice in response to the Civil Investigative Demand it received therefrom.

In summary, the Arab Boycott undoubtedly has played, and continues to play, an important role in the syndication of Euro-bond offerings. The impact of this influence is felt much more extensively in Europe than in the United States and it appears to be carried out, for the most part, by foreign entities not under the jurisdiction of any domestic regulatory or governmental agency.

The findings of the Association's investigation will be presented to the District Business Conduct Committee for District No. 12 (New York) for its review and action as deemed appropriate.

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., April 9, 1976.

Mr. FRANK J. WILSON,
Senior Vice President, National Association of Securities Dealers, Inc., Washington, D.C.

DEAR MR. WILSON: Thank you for sending the Commission a copy of the NASD's Report concerning the Arab Boycott. You stated that the Report would be placed before the District Business Conduct Committee of District No. 12 (New York) for whatever action it deems appropriate. Since that Committee's consideration of the Report, which was, I understood, originally planned for February, is now expected to take place in April, I thought it best not to await the results of that proceeding before thanking you and reiterating the Commission's views on the subject of the boycott.

As you are aware, the Commission views as a most serious matter the exclusion of any firm, on a discriminatory basis, from an offering of securities in the United States or abroad. We have stated our view, in Securities Exchange Act Release No. 11860 (Nov. 20, 1975), that attempts to implement such discriminatory practices by investment banking firms, or their affiliates, subject to regulation by the Commission, would be inconsistent with just and equitable principles of trade, and may raise questions as to the fairness of the markets in which such practices occur. We pointed out in that Release that such activities could subject those involved to NASD disciplinary proceedings or appropriate action by the Commission, and we are encouraged that the NASD is actively pursuing questions of involvement by its members, or their affiliates, in Arab boycott requests.

The Commission met on March 12, 1976, with representatives of other government agencies to discuss various approaches to the problem of the Arab boycott; in connection with the application of the Federal securities laws to boycott attempts, it remains our view that the NASD is the appropriate body, in the first instance, to enforce just and equitable principles of trade. The NASD's investiga-

tion is an important step in continuing to discourage any discriminatory practices in connection with the formation of underwriting syndicates by its members or their affiliates, and we urge the NASD to continue its diligent monitoring of underwriting syndicates for any evidence of discriminatory practices.

I would appreciate your bringing to my attention directly the results of the District Business Conduct Committee's consideration of the Report.

Sincerely,

RODERICK M. HILLS, *Chairman.*

NATIONAL ASSOCIATION OF SECURITIES DEALERS,
Washington, D.C., April 21, 1976.

Hon. RODERICK M. HILLS,
Chairman, Securities and Exchange Commission,
Washington, D.C.

DEAR MR. HILLS: As you are aware, the District Business Conduct Committee for District No. 12 considered the Association's report concerning the Arab Boycott at its meeting in New York on Thursday, April 15, 1976. We have previously forwarded to you a copy of that report and attachments thus the substance will not be restated herein. Prior to the meeting each member of the Committee had been supplied with a copy of the report.

The matter was discussed and debated at length by the Committee and its conclusions recognized the Association's and the Commission's previous expressions on the subject that the exclusion of any firm on a discriminatory basis from an offering of securities could be determined to be violative of Article III, Section 1 of the Association's Rules of Fair Practice in that such would be inconsistent with high standards of commercial honor and just and equitable principles of trade. In this vein, the Committee discussed at length whether the concept of "substitution," to wit, removal of a firm from an underwriting and substitution therefor of an affiliate company of the firm, which was pursued by at least two members and is detailed in the referred-to report is also violative of that section of the Association's Rules. Its discussions also noted that no one had been "hurt" and that no member had complained of the action taken by the managers who pursued the substitution process. The Committee determined, nevertheless, that such action should be deemed a violation of the Association's Rules of Fair Practice and it so concluded. It, therefore, directed that the two members of the Association in respect of whom positive evidence was developed in the Association's investigation, Blyth Eastman Dillon & Co., Inc. and Dillon, Read & Co., Inc., be sent letters of caution as a result of their substitution activity. It also directed that as a condition to the letter of caution a written representation be obtained from both of the members that they will not engage in the referred-to conduct in the future.

The Committee also recommended that the Association's Board of Governors issue a release to its membership outlining that the exclusion of any firm on a discriminatory basis from an offering of securities is violative of Article III, Section 1 of the Rules and, also, that the said release specifically refer to and discuss the substitution process and inform the membership that such conduct would also constitute a violation of the Association's Rules.

It should be noted that the Committee was of the opinion that only a letter of caution was warranted in the subject cases since the substitution concept had not previously been spoken to by the Association. It concluded, however, that any occurrences after notice to the membership by the Board should be deemed more serious in nature and treated more severely.

As soon as the letter of caution has been sent and the written representations from the members involved that they will not engage in this course of conduct in the future have been received, we shall forward copies thereof to you so your record in the matter will be complete.

If you have any further questions, we will be happy to respond in greater detail either in writing or in person.

Sincerely,

GORDON S. MACKLIN,
President.

75-877 O - 76 - 8

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., May 4, 1976.

MR. GORDON S. MACKLIN,
President, National Association of Securities Dealers, Inc.,
Washington, D.C.

DEAR MR. MACKLIN: Thank you for your letter of April 21, 1976, describing the action taken by your New York District Business Conduct Committee in connection with the unfortunate response of two NASD member firms to Arab Boycott pressures. We very much appreciate your firm response to this problem and your keeping us at the Commission informed of the specific steps you are taking. I know the NASD will continue its vigorous efforts to eliminate discriminatory practices which violate its traditional high standards of just and equitable principles of trade.

Sincerely,

RODERICK M. HILLS,
Chairman.

SECURITIES EXCHANGE ACT

Release No. 11860/November 20, 1975

The Commission wishes to express its support for President Ford's strong statement reiterating the United States' policy of opposition to discriminatory practices against United States citizens or businesses resulting from foreign boycotts. Any such discriminatory practices in areas of commerce subject to regulation by the Commission will be viewed as a most serious matter.

Earlier this year, it was reported in the press that some investment bankers were attempting to condition their participation in certain underwriting syndicates, organized to distribute securities to the public, on the exclusion of some firms on religious or ethnic grounds. In response to these reports, the Commission and the National Association of Securities Dealers, Inc. ("NASD") commenced a program to monitor practices in the securities industry in order to determine whether such discriminatory practices, in fact, were occurring.

The inquiry revealed that some firms apparently had been excluded, on a discriminatory basis, from offerings of securities in certain foreign countries. However, United States investment bankers, following the best traditions of the securities industry, appear to have resisted attempts to implement such discriminatory practices in connection with offerings of securities in this country.

Nevertheless, because the Commission strongly believes that any future attempts to implement such discriminatory practices, in connection with the purchase or sale of securities, would be contrary to the public interest and the protection of investors, the Commission and the NASD will continue to monitor underwriting syndicates for any evidence of such practices. The formation by investment banking firms, or their affiliates, subject to regulation by the Commission, of syndicates to distribute securities in the United States or abroad, the composition of which reflects such attempts, would be inconsistent with just and equitable principles of trade, and may raise questions as to the fairness of the markets in which such practices occur. Such activities could subject those involved to NASD disciplinary proceedings or appropriate action by the Commission.

Accordingly, persons who seek capital from the investing public, as well as those engaged in the business of effecting any such undertaking—including brokers or dealers, investment bankers and investment advisers—should be aware that the Commission and the securities industry's self-regulatory organizations are prepared to exercise their full authority to proscribe participation in such discriminatory activities.

APPENDIX 4.—ADDITIONAL CORRESPONDENCE AND MATERIAL RELATIVE TO THE HEARINGS

NINETY-FOURTH CONGRESS

Congress of the United States

House of Representatives

COMMERCE, CONSUMER, AND
MONETARY AFFAIRS SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-350-A-B
WASHINGTON, D.C. 20515

May 19, 1976

Mr. William I. Spencer, President
First National City Bank
399 Park Avenue
New York, New York

Dear Mr. Spencer:

On June 8 and 9, 1976, the Commerce, Consumer and Monetary Affairs Subcommittee will be holding hearings into the nature and extent, within the financial community, of boycott activities by certain foreign countries against the State of Israel and those doing business in or with the State of Israel; and the regulatory policies and practices of the Federal banking agencies with respect to these activities.

In anticipation of those hearings, I would appreciate your furnishing by June 4, 1976, full and complete answers to the following:

(1) Since October 1, 1973, has your bank participated in the issuance or the handling of letters of credit or other drafts containing conditions which tend to further (i) a boycott against the State of Israel; (ii) a boycott of a company or person on the ground that it or he is engaged in commerce in or with the State of Israel; or (iii) a boycott of a company or person on the basis of race, religion, sex, national origin, being named on a "boycott" list of any foreign country, league or association, or being otherwise associated in any way with the State of Israel (or because such company or person does business with or employs, is in partnership or joint venture with such a company or person)?

Please indicate (a) the number of and total dollar amounts involved in all such drafts or letters of credit; (b) all foreign nations referred to therein; and (c) the policy of your bank in

connection with the issuance, honoring or otherwise handling of any letters of credits or drafts which tend to further the aforementioned boycott activities.

(2) Cite all instances, since October 1, 1973, in which your bank has received from or on behalf of a depositor or other source of bank liabilities located in a foreign country a request for information regarding business which your bank conducts (i) with and in the State of Israel, (ii) with any company or person who does business in or with the State of Israel or is a citizen of the State of Israel, or (iii) with any company or person of any particular designated race, religion, sex, national origin; who is included on a "boycott" list of any foreign country, league or association; or who is otherwise associated in any way with the State of Israel (or because such company or person does business with or employs, is in partnership or joint venture with such a company or person)?

Please indicate the party making such a request, the date the request was made, the specific nature of the request and your disposition of the request.

(3) Since July 1, 1973, has your bank decreased by 50 percent or more the amount of any line of business or services conducted within or for (i) the State of Israel, (ii) any company who is a citizen or domicile of the State of Israel or included on a "boycott" list of any foreign country, league or association?

Please indicate the party or parties involved, the line of business or services affected, and the percent decrease in such line of business or services so affected as reported on the most convenient quarterly or monthly basis.

(4) What is your bank's policy in regards to fulfilling requests for information described in question "2" above? What guidance has your bank sought on any of the foregoing matters from the appropriate state and federal regulatory agencies since October 1, 1973?

Your prompt attention to this request would be greatly appreciated. Please contact Peter S. Barash, staff director, or Ronald A. Klempner, staff counsel, if you have any questions related to the above request.

Sincerely,

Benjamin S. Rosenthal
Chairman

BANK OF AMERICA

JAMES F. LANGTON
Senior Vice President

June 10, 1976

The Honorable Benjamin S. Rosenthal
Chairman, Commerce, Consumer, and
Monetary Affairs Subcommittee
United States House of Representatives
Rayburn House Office Building, Room B-350-A-B

Dear Chairman Rosenthal:

This will respond to your letter of May 19, 1976 requesting our comments with respect to certain questions under consideration by your Subcommittee concerning boycott activities against the State of Israel. We discussed our response directly with Staff Counsel to the Subcommittee, Mr. Ronald Klempner. Mr. Klempner advised a written response to your letter would be helpful and asked us to comment on the need, if any, for additional legislation in this area.

Your letter seeks information regarding the Bank's participation in, and policy concerning, letters of credit and related transactions since October 1, 1973 which may have involved conditions furthering, or related to, the Arab boycott of Israel, information from that date concerning depositor inquiries regarding the Bank's business which may have boycott related implications, our policy with respect to such inquiries, and information since July 1, 1973 on decreases in the amount of our business or services conducted within or for the State of Israel or with any company connected with the State of Israel or included on a "boycott list."

Complete answers to your questions from the relevant dates would require the expenditure of considerable time and expense. It would necessitate a survey of all of our records worldwide and an inquiry directed to all of our officers and employes who may have had some involvement in the transactions described. Accordingly, we trust you will find acceptable our answers to your specific questions based upon those records readily available and the best information and

belief of the senior officers of our Bank concerned with these matters.

It is our policy in all business transactions to avoid discrimination or the furtherance of discrimination based upon race, religion, creed, sex or national origin. To the best of our knowledge, we have not participated in the issuance or handling of letters of credit or related transactions containing conditions which tend to further a boycott of a company or person on the basis of such considerations.

It is our policy with respect to the participation in other letters of credit or business transactions which may involve conditions furthering other types of boycotts, to follow the laws and enunciated policies of the United States to the best of our ability, and, further, to fulfill our responsibilities to our customers as a major international financial intermediary to promote the flow of goods and services in international trade. In that regard, the Office of Export Administration of the Department of Commerce has issued regulations concerning restrictive trade practices or boycotts. These regulations prohibit United States exporters and related service organizations (such as banks, insurers, freight forwarders and shipping companies) from taking any action, including the furnishing of information or the signing of agreements, that have the effect of furthering or supporting a restrictive trade practice that discriminates against United States citizens or firms on the basis of race, color, religion, sex or national origin. In keeping with the requirements of these regulations, as well as our own internal policy, we do not issue or process letters of credit which are prohibited by such regulations.

The Department of Commerce regulations also "discourage," but do not prohibit, the issuance or processing of letters of credit with conditions which tend to further boycotts of any company or person because it, or he, is engaged in commerce with, or in, a particular country, is named on a "boycott" list of a foreign country, league or association, or is otherwise associated in any way with a particular country. Such letters of credit are reviewed to determine if, in fact, the conditions involved are prohibited or discouraged. Assuming such review confirms the fact the conditions involved are not prohibited, such letters of credit generally are processed in furtherance of our policy to promote and to participate in the financing of international trade in compliance with applicable laws and regulations governing this activity.

Our present policy and procedures have been promulgated to all appropriate offices of this Bank and its Edge Act subsidiaries. Circulars dated December 22, 1975 and February 20, 1976 enunciating these policies and procedures are enclosed for the Subcommittee record.

With regard to the volume of transactions reportable to the Department of Commerce, this Bank and its Edge Act subsidiaries reported between January 1 and May 31 of this year approximately 2,556 letters of credit involving exports from the United States containing boycott-related conditions, aggregating in approximate dollar amount $259,691,000. The vast majority of such letters of credit contained "discouraged" conditions and were processed. Those few letters of credit containing prohibited conditions were returned to the forwarding bank and were not processed, although they were reported.

You also inquire about the receipt, since October 1, 1973, from or on behalf of a depositor or other source of Bank liabilities located in a foreign country of requests for information regarding business which this Bank conducts: (i) with and in the State of Israel; (ii) with any company or person who does business in or with the State of Israel; or (iii) with any company or person of any particular designated race, religion, sex, national origin, who is included on a "boycott" list of any foreign country, league or association, or who is otherwise associated in any way with the State of Israel or because such company or person does business with or employs, is in partnership or joint venture with such a company or person. Again, time and cost constraints dictate against the search of pertinent records since October 1, 1973. Further, a complete answer would also require the questioning of all personnel who have been employed by the Bank and its Edge Act subsidiaries since October 1, 1973 who may have verbally received such a request. However, within such constraints, the Bank has ascertained that it has, on occasion, received such requests from parties supporting and opposing the boycott.

With respect to these and other similar requests we must emphasize the very important legal considerations underlying the confidentiality of Bank customer relations. Those considerations require the Bank to refuse to answer any inquiries where customer identity or information are involved. Accordingly, the implications of those legal considerations preclude any response to such requests.

You also ask if, since July 1, 1973, we have decreased by 50% or more the amount of any line of business

or service conducted within or for the State of Israel or any company which is a citizen or domiciled in the State of Israel or included on a "boycott" list of any foreign country, league or association. Since July 1, 1973, lines of businesses and services conducted by this Bank within or for the State of Israel and companies who are citizens or domiciles of the State of Israel in the aggregate have increased substantially. Time and cost constraints do not allow the examination of every conceivable record of the Bank and its Edge Act subsidiaries which might reveal a decrease in specific lines of business of the type described in the question. In addition, we do not know if a particular company is included on a "boycott" list of a foreign country, league or association since these lists are not readily available.

We presume the amount of some lines of business or services covered by this question has decreased by 50% or more. However, we emphasize to the best of our knowledge no such decrease has resulted from a "boycott"-related reason. Rather, economic or financial considerations such as bankruptcy, receivership and the like, or the termination of a relationship in the normal course of business, such as the repayment of a loan, caused such decrease. Even if such information were readily available, we would hesitate to disclose any particular party or parties involved, lines of business or services affected, or the percent decrease in such line of business or services so affected because of the confidentiality constraints imposed upon us.

Finally, you inquire if we have sought guidance on boycott-related matters from appropriate Federal or state regulatory agencies since October 1, 1973. To the best of our knowledge we have not sought any such guidance or interpretation.

With regard to the question posed by Mr. Klempner as to whether new legislation is needed concerning boycott-related activities, we believe specific restrictive legislation would be counter-productive to a reasoned and long term resolution of the boycott problem, and, in general, to the normalization of relationships between the State of Israel and the various Arab states.

We believe existing laws and regulations directed against anti-competitive and discriminatory practices adequately protect the interests of the United States and its citizens. New legislation could exacerbate the Middle

East situation by distorting or inhibiting the continued development of trade relationships. Such relationships are of great importance in furthering long term diplomatic solutions.

We appreciate this opportunity to express our views to the Subcommittee on this important issue.

Sincerely,

James F. Langton
Senior Vice President

Encls.

BANK OF AMERICA
NATIONAL TRUST AND SAVINGS ASSOCIATION

Circular L-4827

December 22, 1975

SUBJECT: RESTRICTIVE TRADE PRACTICES OR BOYCOTTS

Information

The Office of Export Administration of the United States Department of Commerce has recently published revised regulations, which affect all domestic and foreign offices of Bank of America NT&SA and its Edge Act banks, concerning restrictive trade practices or boycotts.

The regulations describe two kinds of practices: Practices which are prohibited, and practices which are discouraged. (The regulations only affect practices directly or tangentially affecting the export of commodities, services or information from the United States.)

The regulations prohibit any action, including the furnishing of information (for example, pursuant to a letter of credit) or the signing of agreements, that has the effect of furthering or supporting discrimination against United States citizens or United States firms on the basis of race, color, religion, sex or national origin.

The regulations discourage any action, including the furnishing of information or the signing of agreements, that has the effect of furthering or supporting restrictive trade practices or boycotts fostered or imposed by one foreign country against any other foreign country friendly to the United States.

(A request or restriction solely precluding the export of commodities from the United States to the importing country on shipping or transportation facilities that are owned, controlled, operated or chartered by a certain foreign country or a national of that country or that stop in a certain foreign country prior to stopping at the port of unlading is not deemed a restrictive practice, but rather a precautionary measure to avoid any risk of confiscation.)

Action

Effective immediately, maintain a record of any request to engage in any precautionary measure or prohibited or discouraged practice. (This will most often arise with respect to requests to furnish certain types of information.)

Refrain from engaging in any prohibited practice.

CC-13-B

Action (continued)

Pending further clarification, clear all discouraged practices with the appropriate senior credit administrator in your unit.

At this time, analysis of the regulations is not complete, and additional guidance will be provided in the near future.

Important

It has long been a policy of Bank of America to refuse to entertain questions of race, color, creed or national origin in its business dealings. It is neither right, nor in the best interest of the bank, to participate in any credit or other business venture where a condition of the venture is discriminatory.

Questions

Legal Department #3017
(SF Ext. 2629)

D. S. Langsdorf
Executive Vice President and Controller

BANK OF AMERICA
NATIONAL TRUST AND SAVINGS ASSOCIATION

Circular IB-628

February 20, 1976

SUBJECT: RESTRICTIVE TRADE PRACTICES AND BOYCOTTS

Information

The U.S. Department of Commerce has issued a revision of their Export Administration Regulations to prohibit U.S. exporters and related service organizations from taking any action, including the furnishing of information or the signing of agreements, that has the effect of furthering or supporting a restrictive trade practice that discriminates against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin.

The regulations also discourage U.S. exporters and related service organizations from taking any action, including the furnishing of information or the signing of agreements, that has the effect of furthering or supporting restrictive trade practices fostered or imposed by one foreign country against any other foreign country friendly to the U.S.

A copy of the Export Administration Bulletin No. 149, dated November 20, 1975, detailing these regulations, is attached. The regulations have world wide application, and apply to exports from the U.S. to any country, not solely the Middle East.

Also attached is a copy of circular L-4827, stating bank policy in this respect.

Action

- Review attached documentation with staff to be sure requirements are understood.

- When reportable transactions occur, overseas units are to:

  (1) Cable details to World Banking Division Credit Administration, San Francisco, simultaneously forwarding to that unit by courier/airmail copy of document in question.

  (2) WBD Credit Administration will review, consult with Legal Department, and cable respective Division Credit Administration, Regional/Area office concerned, and unit, regarding action to be taken. When transaction has been settled, file will be forwarded to WBD Operations and Control, which will control preparation of report to Department of Commerce.

  (3) Keep copies of transactions available for inspection for 2 years.

TCC-9B

(over)

Circular IB-628 Subject: Restrictive Trade Practices

February 20, 1976

Action (continued) - U.S. based units will report in accordance with applicable regulations.

Questions Division Operations, Credit Administration, or Legal Department, as applicable.

D. S. Langsdorf
Executive Vice President
Senior Administrative Officer

TCC-9B

CITIBANK

Citibank, N.A.
399 Park Avenue
New York, N.Y.
10022

Hans H. Angermueller
Senior Vice President
and General Counsel

June 1, 1976

Honorable Benjamin S. Rosenthal
Chairman
Commerce, Consumer, and Monetary
Affairs Subcommittee of the
Committee on Government Operations
Rayburn House Office Building
Room B-350-A-B
Washington, D. C. 20515

Dear Mr. Chairman:

Mr. William I. Spencer, President of Citibank, has referred to me your letter of May 19, 1976 posing certain questions regarding, among other things, boycott activities conducted by certain foreign countries against the State of Israel which, we understand, will be the subject of hearings to be held by your Subcommittee in the near future.

We submit the following in response to the four questions set forth in your letter:

(1) Citibank has, since October, 1973, issued or otherwise handled letters of credit at the request of non-U. S. customers or correspondents which are addressed to U. S. exporters and which, among other things, may request the applicable U. S. exporter to furnish documents which certify to one or more of the following:

(a) That the goods are not of Israeli origin;

(b) That neither the exporter nor any of its affiliates is on the so-called "Arab Boycott List";

(c) That the vessel transporting the goods is not of Israeli flag or "blacklisted"; or

(d) That the insurer of the goods is not "blacklisted".

So far as Citibank is aware it has not issued or otherwise handled letters of credit or other drafts containing conditions which tend to further a boycott of a company or person, whether U. S. or non-U. S., on the basis of race, religion, sex or national origin.

As you are aware, the reporting requirements of the Export Administration Regulations of the Department of Commerce which were promulgated on November 20, 1975 only became effective as to banks such as ours on and after December 1, 1975. Accordingly, we are not in a position to furnish to you within the time frame of your request information as to the number of and total dollar amounts involved in letters of credit of the type referred to in the first paragraph of this answer or the foreign nations referred to therein for the periods prior to December 1, 1975. However, we can state that Citibank's policies with respect to the issuance or other handling of such letters of credit prior to such date were not different in substance from those which prevailed after such date.

(2) Within the limited time available for responding to your letter, I have been unable to ascertain, nor do I have any personal knowledge that any Citibank depositor or other source of Citibank liabilities located in a foreign country has made any request for information regarding the business which Citibank conducts (i) with and in the State of Israel, (ii) with any company or person who does business in or with the State of Israel or is a citizen of the State of Israel, or (iii) with any company or person of any particular designated race, religion, sex, national origin; who is included on a "boycott" list of any foreign country, league or association; or who is otherwise associated in any way with the State of Israel (or because such company or person does business with or employs, is in partnership or joint venture with such a company or person).

(3) So far as I have been able to ascertain within the limited time available to responding to your letter, Citibank has not decreased by 50% or more the amount of any line of business or services conducted within or for (i) the State of Israel, (ii) any company who is a citizen or domicile of the State of Israel or included on a "boycott" list of any foreign country, league or association.

(4) Citibank's policy in regards to fulfilling requests for information such as are described in question (2) of your letter would be essentially the same whether the inquiring party were located in a foreign country or in the United States; namely, that Citibank is engaged in the general business of international commercial banking; that it deals with its customers (whether domestic or foreign or whether individual, corporate or governmental) on the basis of their general character and creditworthiness and without regard to their race, religion, sex, national origin, citizenship or location; and that such dealings will be held in confidence except to the extent otherwise required by applicable law or judicial process.

In regard to the foregoing matters, Citibank has since October 1, 1973, on various occasions, communicated directly or indirectly with, or received guidance from publications issued by, the Department of Commerce, the Department of State, and the Department of the Treasury as well as from the Federal Reserve Board and the New York State Human Rights Commission.

We hope the foregoing answers are responsive to the questions which you have posed.

Very truly yours,

Hans Angermueller

CITIBANK

Citibank, N.A.
399 Park Avenue
New York, N.Y.
10022

Patrick J. Mulhern
Vice President

June 7, 1976

Ronald A. Klempner, Esq.
House of Representatives
Commerce, Consumer and Monetary
Affairs on Government Operations
Rayburn House Office Building,
Room B-350-A-B
Washington, D.C. 20515

Dear Mr. Klempner:

Pursuant to your request, we hereby confirm that from December 1, 1975 to April 15, 1976, Citibank issued or otherwise handled 235 Letters of Credit with an aggregate dollar value of Ten Million Five Hundred Twenty-Four Thousand Two Hundred Ninety One Dollars ($10,524,291) at the request of certain non-United States customers or correspondents, primarily of Middle-East origin which included one or more of the clauses set forth on page one of Mr. Angermueller's letter dated June 1, 1976 addressed to Chairman Rosenthal.

Very truly yours,

SPECIAL DELIVERY
cc: Mr. R. Haberkern - Milbank Tweed ✓

Arab Org. Fl Subp
R of 8015-13-2

The Chase Manhattan Bank, N.A.
1 Chase Manhattan Plaza
New York, New York 10015

Richard A. Fenn
Vice President

CHASE

June 3, 1976 ✓

Congressman Benjamin S. Rosenthal
Chairman
Commerce, Consumer and
Monetary Affairs Subcommitte of the
Committee on Government Operations
House of Representatives
Congress of the United States
Rayburn House Office Bldg., Rm. B-350-A-B
Washington, D. C. 20515

Dear Congressman Rosenthal:

I am a Vice President of The Chase Manhattan Bank, N.A. in charge of correspondent banking relationships in the Africa and Middle East Banking Group. Since the matters referred to in your letter of May 19, 1976 to Mr. Butcher concern my Banking Group, Mr. Butcher has asked me to reply to your questions.

I am unable to respond at this time concerning inclusion of economic boycott provisions in letters of credit advised or confirmed by our Bank for a period going as far back as October 1, 1973, since our records with respect to older letters of credit are in storage and are not indexed in any manner that would provide ready access to the information requested.

Beginning, however, with the imposition of the amended Department of Commerce Regulations on December 1, 1975, which extended the Regulations to related service organizations, including banks and insurance companies, we instituted procedures for review of documentary conditions contained in letters of credit in order to avoid participation in any transaction prohibited under the Regulations and to comply with the quarterly reporting requirements. These procedures are also applied in respect of transactions within the scope of Chapter 622 of the Laws of New York of 1975 which took effect on January 1, 1976.

The following numbered paragraphs are in response to the correspondingly numbered paragraphs of your letter.

1) With respect to the periods for which we have filed reports with the Department of Commerce (December 1975 and first quarter of 1976):

a) Letters of Credit advised, and in cases confirmed, by us involving economic sanctions against the State of Israel reportable under Section 369.3 of the Regulations were as follows:

Approximate Number of Letters of Credit	375
Approximate Total Face Amounts of Letters of Credit	$19,300,000

b) Arab countries in the Middle East and African countries were referred to in such letters of credit.

c) The policy of our Bank is to comply with all applicable legal restrictions and to make reports as required by the Regulations.

We understand that there are a number of so-called "black lists", but we do not obtain any such lists and have no knowledge of the reason for any person or company being "blacklisted" except as may be reported in the public press.

We have not as a matter of policy, as well as of law, issued, advised or confirmed letters of credit which involved discrimination on the basis of race, color, religion, sex or national origin.

2) I have no knowledge of any instances of requests for information of the sort referred to in this question.

3) We are, of course, not in a position to disclose our confidential relationships with our customers. It is, however, known that we have had and continue to have a major relationship with the State of Israel going back almost to statehood, including acting as agent for State of Israel bonds. In the unlikely event that we would have knowledge that a customer or a potential customer were on a "boycott" list of any foreign country, league or association, such fact would have no bearing on our maintaining or establishing credit facilities or other banking relationships with such customer or potential customer.

4) We consider our relationships with our customers to be highly confidential and we would not as a matter of policy, respond to requests for information of the type referred to in question (2) were any such requests to be received.

Since December 1, 1975, we have inquired of the Department of Comerce from time to time regarding the application of the Regulations to specific situations and, following the publication of the letter from the Board of Governors of the Federal Reserve System dated December 12, 1975, we made inquiry concerning the effect of such letter which, as you know, was subsequently clarified by a further letter from the Board dated January 20, 1976.

I believe that the above information is fully responsive to your questions to the extent of the information we were in a position to assemble within the short time allowed and I understand that it will not be necessary for a representative of my Bank to appear personally at the hearings of your Subcommittee on June 8, 1976.

Very truly yours,

MANUFACTURERS HANOVER TRUST COMPANY

350 PARK AVENUE, NEW YORK, N.Y. 10022

LEGAL DEPARTMENT

June 4, 1976

Hon. Benjamin S. Rosenthal, Chairman
Commerce, Consumer, and Monetary
Affairs Subcommittee of the
Committee on Government Operations
House of Representatives
Rayburn House Office Building, Room B-350-A-B
Washington, D. C. 20515

Dear Congressman Rosenthal:

At the request of John F. McGillicuddy, President of Manufacturers Hanover Trust Company, I am responding to your letter to him of May 19, 1976.

Prefatory to our comments, we would like to note that the role of the commercial bank in export letter of credit transactions, ordinarily, would be, upon the request of a foreign correspondent bank, to advise or confirm a credit issued by such bank for the account of a buyer situated in such foreign bank's locale. The conditions to payment would be arrived at between the seller and buyer, and would call for the presentation of sundry documents, some of which may well be mandated by the laws and regulations of the country in which the buyer is located.

In connection with documentary letter of credit transactions, we have been requested to advise or confirm certain credits that would constitute a reportable transaction under Section 369.3 of the Export Regulations of the United States Commerce Department in that such credits, by calling for particular certifications of the exporter as a condition to payment, would appear to further a boycott against the State of Israel. Illustrative of these certifications, as well as other certifications not required to be reported under said regulations, are that:

(1) the goods are not of Israeli origin;

(2) the vessel carrying the goods does not fly the Israeli flag;

(3) the exporter is not on a "blacklist";

(4) the vessel transporting the goods will not stop at an Israeli port; and

(5) the vessel is not on a "blacklist".

Hon. Benjamin S. Rosenthal, Chairman
Commerce, Consumer, and Monetary
Affairs Subcommittee of the
Committee on Government Operations

June 4, 1976

Insofar as we have been able to ascertain, we have not participated in any credit containing specific conditions which, in our view, would indicate the boycott of a company or person on the ground that it or he is engaged in commerce in or associated with the State of Israel.

Our policy is not to participate in any letter of credit transaction that contains conditions that would appear to discriminate against a company or person on the basis of race, religion, color, sex or national origin. In this connection, our practice is to closely monitor all transactions so as to insure our continuing rejection of any situation calling for a statement that may be construed as having any such effect.

In response to your second inquiry, as best we can determine, we have not received from or on behalf of a depositor or other source of bank liabilities located in a foreign country, a request for information regarding business which we conduct (i) with or in the State of Israel, (ii) with any person or company who does business with or in the State of Israel or is a citizen of the State of Israel, or (iii) with any company or person of any particular designated race, religion, color, sex or national origin; who is included on a "boycott" list of any foreign country, league or association; or who is otherwise associated with the State of Israel.

With regard to your third question, it is and has been our practice to extend, cancel, increase or decrease any credit facility on the basis of a careful analysis of all relevant credit factors. No such determination would be made unless the circumstances do in fact have a direct bearing upon credit considerations. For your information, our most recent figures reveal that aggregate credit facilities to Israel and Israeli-owned companies have increased by almost fivefold for the period beginning on January 31, 1973 and ending on December 31, 1975.

In response to your fourth question, we have not ascertained (as indicated in response to question (2)) having received any such request from or on behalf of a depositor or other source of bank liabilities. Consequently, we have not felt it necessary to disseminate written policy to our staff with respect to fulfilling requests for such information. In this regard, however, we should like to cite a long standing practice in our Bank of establishing relationships with individuals, companies as well as governmental entities that is based

Hon. Benjamin S. Rosenthal, Chairman
Commerce, Consumer, and Monetary
Affairs Subcommittee of the
Committee on Government Operations

June 4, 1976

upon what we believe to be prudent banking judgments. Accordingly, we would strongly resist any efforts on the part of a prospective depositor to make the opening or maintenance of an account relationship contingent upon our terminating a relationship with some other customer or declining to establish one with a prospective customer.

Regarding the extent of any guidance which we have sought on the matter of the boycott, we have reviewed several statements of various regulatory agencies in order to learn all legal requirements imposed under both state and federal law. Secondly, several of our people engaged in conversations with representatives of the United States Department of Commerce with the view to insuring our compliance with the recently amended regulations under the Export Administration Act. Finally, meetings and conferences were attended at which officers of both federal and state regulatory authorities discussed various aspects of the boycott.

Very truly yours,

Ernest D. Stein
Vice President

MANUFACTURERS HANOVER TRUST COMPANY

350 PARK AVENUE, NEW YORK, N.Y. 10022

LEGAL DEPARTMENT

June 7, 1976

Ronald A. Klempner, Esq.
Staff Counsel
Commerce, Consumer, and Monetary
Affairs Subcommittee of the
Committee on Government Operations
House of Representatives
Rayburn House Office Building, Room B-350-A-B
Washington, D. C. 20515

Dear Mr. Klempner:

With reference to my earlier letter of June 4, 1976 to Congressman Rosenthal, I am writing to confirm certain points raised in our telephone conversation of last Friday afternoon.

In the third paragraph of my letter to the Congressman, I had indicated that the Bank from time to time had been requested to confirm or advise letters of credit containing one or more clauses that would appear to further a boycott against the State of Israel. Each such credit is issued by a foreign bank who will request a bank located in the country of the exporter (in this case, Manufacturers Hanover Trust) to advise or confirm to the exporter the issuance of such credit in its favor and the conditions that must be complied with in order to obtain payment. In our advising or confirming such credits, I had listed a number of clauses that were illustrative of those that may be viewed as tending to further a boycott against the State of Israel.

In our conversation you had also asked how we can reconcile the statement that we know of no instance in which the Bank participated in any credit which tended to further a boycott of a company for the reason of it being engaged in commerce in or with or be otherwise associated in any way with the State of Israel, with the clauses illustrated in the third paragraph of my letter. In response thereto I had merely pointed out that an examination of credits that we had advised or confirmed failed to reveal an instance where any conditions contained in a credit appeared to further a boycott against a company or person on the specific grounds that it or he is engaged in commerce in, or otherwise associated with, the State of Israel.

Very truly yours,

Ernest D. Stein
Vice President

MANUFACTURERS HANOVER TRUST COMPANY

350 PARK AVENUE, NEW YORK, N.Y. 10022

LEGAL DEPARTMENT

June 29, 1976

Hon. Benjamin S. Rosenthal, Chairman
Commerce, Consumer, and Monetary
Affairs Subcommittee of the
Committee on Government Operations
House of Representatives
Rayburn House Office Bldg., Room B-350-A-B
Washington, D. C. 20515

Dear Congressman Rosenthal:

I am writing in response to your letter of June 23rd wherein you had requested that we provide you with the information sought by question 1 of the Subcommittee's letter of May 19th.

While we had not furnished all of the information referred to in question 1, we do wish to point out that a portion of that information was, in fact, provided. The reason for our not having given the specific data on the number and dollar amounts involved in drafts or letters of credit, as of the requested date, namely, October 1, 1973, was due to the fact that such information could only be retrieved by means of a very laborious manual examination of all letter of credit transactions involving the Bank since October of 1973, and in view of the time constraints under which we were operating, we concluded that there was no possible way that we would be in a position to provide you with that kind of information.

You now have indicated, however, that the Subcommittee would be prepared to receive such information for some period other than as of October 1, 1973. In view of that expression, we are herewith furnishing the requested information for the period commencing as of December 1, 1975 and ending March 31, 1976. This particular period has been chosen by reason of the fact that, since December 1, 1975, we have been filing quarterly reports with the United States Department of Commerce pursuant to the recently revised Export Administration Act regulations promulgated by the Department of Commerce, and the information which you are requesting has been developed from such reports.

For the period commencing December 1, 1975 and ending March 31, 1976, we have processed documents for 178 letter of credit transactions that are reportable to the Commerce Department under Section 369.3 of its Regulations, representing an aggregate amount of $12,195,832.15.

As we indicated in our earlier letter of June 3rd, we will not participate in any transaction that would contain a condition that

Hon. Benjamin S. Rosenthal, Chairman
Commerce, Consumer, and Monetary
Affairs Subcommittee of the
Committee on Government Operations

June 29, 1976

would appear to discriminate against a company or person on the basis of race, religion, color, sex, or national origin. Accordingly, since December 1, 1975 through the period ending March 31, 1976, we have refused to participate in 10 letter of credit transactions as a result of such credits having provisions that would appear to discriminate on the foregoing basis. The total dollar amount of these credits was $1,545,157.77.

We trust that the foregoing information now affords a full response to all of the questions that originally had been posed.

Very truly yours,

Ernest D. Stein
Vice President

BANKERS TRUST COMPANY
280 PARK AVENUE, NEW YORK 10017

JOHN W. HANNON, JR., PRESIDENT
TELEPHONE 212 692-3765

MAILING ADDRESS
POST OFFICE BOX 318
CHURCH STREET STATION
NEW YORK, NEW YORK 10015

Benjamin S. Rosenthal, M.C.

June 2, 1976

The Honorable Benjamin S. Rosenthal
Chairman
Commerce, Consumer, and Monetary Affairs
Subcommittee of the
Committee on Government Operations
House of Representatives
Rayburn House Office Building, Room B-350-A-B
Washington, D. C. 20515

Dear Congressman Rosenthal:

In response to your letter of May 19, 1976, please be advised that we conduct a review, on a continuing basis, with respect to our issuance of letters of credit and we are confident that our letter of credit operations are in full compliance with all applicable laws, rules and regulations, including the regulations promulgated by the U. S. Department of Commerce under the Export Administration Act. Your questions in this regard would appear to require the disclosure of information concerning the private affairs of customers of the bank. Our policy is that we do not disclose information of this nature without the customer's consent or otherwise in accordance with due process.

Bankers Trust Company has received no request for information of the kind outlined in your second and fourth questions from any source. It would not be consistent with the confidentiality that we try to provide our customers to comply with such requests, should any be received in the future.

With regard to the general subject matter of your letter, I want to make clear to you that Bankers Trust Company has done business with Israel since the country's founding 28 years ago. We maintain relationships with the country's major banks and we have millions of dollars of loans and lines of credit outstanding with Israel. Our business with Israel has increased in recent years and is now generally higher than it has ever been.

In addition, Bankers Trust Company does not discriminate in its employment practices on any basis, against any group. Persons of various ethnic and religious backgrounds, including the Jewish faith, are at all levels of the organization--first vice president, senior vice president, Advisory Committee and the Board of Directors.

Very truly yours,

Robert Hanover Jr.

BANKERS TRUST COMPANY
280 PARK AVENUE, NEW YORK

JOHN W. HANNON, JR., PRESIDENT
TELEPHONE 212 69[illegible]765

MAILING ADDRESS
POST OFFICE BOX 318
CHURCH STREET STATION
NEW YORK, NEW YORK 10015

July 9, 1976

The Honorable Benjamin S. Rosenthal
Chairman
Commerce, Consumer, and Monetary Affairs
Subcommittee of the
Committee on Government Operations
House of Representatives
Rayburn House Office Building, Room B-350-A-B
Washington, D. C. 20515

Dear Congressman Rosenthal:

Thank you for your letter of June 23, 1976.

As you surmised, our records are such that it would be too burdensome to provide information much before January 1, 1976. For the period from December 1, 1975 through March 31, 1976, we processed 444 letters of credit involving a total of $54,586,250 which contained so-called boycott clauses relating to the State of Israel. The foreign nations referred to in such letters of credit were Israel and various Arab countries in the Middle East and various African countries. Our second quarter figures will not be available until early August, but if you would like them, too, we would forward them when they are available.

As a matter of policy, Bankers Trust Company complies with all applicable laws and regulations, including the regulations issued under the U. S. Export Administration Act which prohibit the bank from participating in transactions if such transactions discriminate or have the effect of discriminating against U. S. citizens or U. S. firms on the basis of race, religion, color, sex or national origin. As required by these regulations, we also report to the U. S. Department

of Commerce quarterly on a confidential basis the receipt of any requests which would further or assist restrictive trade practices of any foreign country against other countries friendly to the United States.

Very truly yours,

John W. Hannon

CHEMICAL BANK

20 Pine Street
New York, NY 10005

Norborne Berkeley, Jr.
President

RECEIVED

Benjamin S. Rosenthal, M.C.

June 2, 1976

Hon. Benjamin S. Rosenthal, Chairman
Subcommittee on Commerce, Consumer
and Monetary Affairs
Congress of the United States
House of Representatives
Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Rosenthal:

Thank you for your letter of May 19 in which you indicate that you would appreciate having my testimony or that of my designate on the nature and extent within the financial community on boycott activities by certain foreign countries against the State of Israel on Tuesday, June 8, at 9:30 a.m. in Room 2203 of the Rayburn House Office Building.

Please be advised that I shall be unable to testify on that date myself because of prior commitments. However, my designate for such testimony will be Edwin E. Batch, Jr., Vice President and Associate Counsel of Chemical Bank.

Very truly yours,

N.B.

STATEMENT OF EDWIN E. BATCH, JR.
BEFORE COMMERCE, CONSUMER, AND MONETARY AFFAIRS
SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENTAL OPERATIONS
JUNE 8, 1976

I am Edwin E. Batch, Jr., Vice President and Associate Counsel of Chemical Bank, and have general responsibility for rendering legal advice to the International Division of Chemical Bank. In this capacity, I am familiar with legislation and regulations on restrictive trade practices and have closely followed recent developments to ensure compliance in this area. During the past 1 1/2 years, I have requested guidance on this matter from the New York State Subcommittee on Human Rights, the New York State Human Rights Division, the New York State Banking Department, the Federal Reserve and the Commerce Department and in February of this year, I testified before the New York State Subcommittee on Human Rights.

In your letter of May 19, 1976 to the Chemical Bank regarding boycott activities of certain foreign countries against the State of Israel and those doing business in or with the State of Israel you listed four questions, and inquired as to Chemical Bank's policies.

Chemical Bank does not support boycotts and restrictive trade practices. Further, Chemical Bank does not issue letters of credit with boycott clauses.

Letters of credit issued by foreign banks in favor of the United States exporters do come into Chemical Bank for delivery to the exporters. These incoming letters of credit sometimes require boycott certificatio from the exporter. If the exporter does not know the foreign bank, he might ask us to confirm the letter of credit. This act obligates us to pay the exporter upon presentation of the documents required by the letter of credit and then seek reimbursement from the foreign bank. Laws and regulations do not permit us to unilaterally change any terms and conditions in these incoming letters of credit. Our only option would be to refuse to deliver them to the exporter. The exporter then would have no bank assurance of being paid for his goods. By our refusal we would be restraining trade and creating a counter-boycott. This we believe, would be an undesirable and inappropriate position for a private institution such as Chemical Bank.

Since October 1, 1973 our Bank has handled incoming letters containing requests for boycott certificates or other restrictive trade practices. We were able to estimate the number of these transactions at approximately 2,500. These transactions represented dollar value of approximately $90 million. They eminated from various countries in Africa and the Middle East. It should be noted that the restrictive clauses contained in these letter of credit transactions are of the type described in Section 369.3 of the Export Administration Regulations and since December 1, 1975 we have been reporting these requests to the Commerce Department as required by

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the Regulations. Chemical Bank has never taken any action on letters of credit which contain clauses which discriminate or have the effect of discriminating against United States citizens or firms on the basis of race, color, religion, sex or national origin, and are described in Section 369.2 of the Regulations.

With regard to questions 2 and 4, our answer is simply no. Chemical Bank would never accept deposits where as a condition the depositor requested or required information regarding bank business with foreign nations or other customers. With regard to question 3, since July 1, 1973, our Bank has not substantially decreased the amount of any line of business or services conducted with or for the State of Israel or any company which is a citizen or domiciliary of the State of Israel. We have never decreased or increased any line of business orservices with a company included on a boycott list of any foreign country, league or association, because of such listing.

Thank you.

IRVING TRUST COMPANY
ONE WALL STREET
NEW YORK, N.Y. 10015

JOSEPH A. RICE
PRESIDENT

RECEIVED
Benjamin S. Rosenthal, M.

June 3, 1976

The Honorable Benjamin S. Rosenthal
Chairman
Commerce, Consumer, and Monetary
Affairs Subcommittee of the
Committee of Government Operations
Rayburn House Office Building
Room B-350-A-B
Washington, D. C. 20515

Dear Congressman Rosenthal:

I am pleased to respond to your letter of May 19.

The numbered paragraphs of this letter conform to the numbered questions set forth in your letter.

1. As an international bank, Irving Trust Company is requested to advise or confirm letters of credit issued by foreign banks for the purpose of financing export transactions. Our only role in such transactions is to make payment against the receipt of documents whose terms are entirely set by others. We do not have any role in setting the terms of the underlying transaction, which are set by the exporter, the importer and the foreign bank.

(continued)

In this respect, we have advised or confirmed letters of credit or other drafts containing conditions which may tend to further a boycott against the State of Israel. However, in all cases wherein we advise or confirm a letter of credit which imposes terms, the effect of which may tend to further a boycott of a friendly nation (such as Israel), we report the request to the Commerce Department - and have been doing so since December 1, 1975 - pursuant to regulations of that Department.

We do not comply with any such request that would discriminate against a U.S. firm or citizen on the basis of race, creed, color, sex or national origin.

With respect to your request for the number and total dollar amount of all letters of credit tending to further the Arab boycott of Israel, we have not retained data for the period prior to December 1, 1975 in a form that is responsive to your request. As I have mentioned, for the period since December 1, 1975, we have been required to report such data on a confidential basis to the Commerce Department. I would hope that obtaining this data on an aggregate basis from the Commerce Department would serve the Subcommittee's purpose while avoiding problems that could be caused by disclosure of such data on an individual basis.

2. To the best of my knowledge, this Bank has received no request for information of the type referred to in question 2.

(continued)

3. To the best of my knowledge, since July 1, 1973 we have not decreased by 50 percent or more the amount of any line of business or services conducted with or for the State of Israel. Nor to the best of my knowledge have we decreased in any way our business with any company on the ground that company is a citizen or domicile of Israel, or included on a "boycott" list.

It should be noted that we have no knowledge of who is on any "boycott" list of any foreign country, league or association.

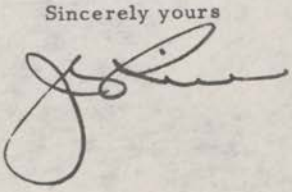
We have done business in Israel and all other nations of the Middle East for a number of years and wish and expect to continue and to develop further this business.

4. To the extent the request is for confidential information relating to a customer (for example, a question regarding business which this Bank conducts with a customer), our policy is to refuse to divulge such information except in response to duly issued legal process and after notification to the customer. To the extent the request is for information publicly available (for example, whether the bank has a branch or other office in Israel) we would ordinarily furnish the requested information.

This Bank has not sought specific guidance from any State or Federal regulatoryagency on the matters referred to above, but has sought to comply at all times with applicable laws and regulations and to keep abreastof new developments and interpretations.

I hope that this letter has been of help in your study. Should you have additional questions, I should, of course be happy to consider them.

Sincerely yours



IRVING TRUST COMPANY

ONE WALL STREET

NEW YORK, N.Y. 10015

ELIOT N. VESTNER, JR.
SENIOR VICE PRESIDENT,
GENERAL COUNSEL AND SECRETARY

TELEPHONE (212) 487-6327

June 18, 1976

JUN 21 1976

Benjamin S. Rosenthal, M.C.

The Honorable Benjamin S. Rosenthal
Chairman
Commerce, Consumer, and Monetary
Affairs Subcommittee of the
Committee of Government Operations
Rayburn House Office Building
Room B-350-A-B
Washington, D. C. 20515

Dear Congressman Rosenthal:

Following discussions which our Washington counsel has had with your staff director, I am furnishing the following information in compliance with the requests made in your letter of May 19.

During the period December 1, 1975 through March 31, 1976, we reported to the Commerce Department 1,393 credits aggregating $55,262,088 issued by banks in near and Middle-Eastern countries.

During the same period, we rejected (and reported to the Commerce Department) 55 credits issued by banks in those countries aggregating $3,261,832 on the ground such credits were prohibited under Commerce Department regulations. Of the prohibited credits, 39 were subsequently amended to comply with the law and 16 were cancelled.

I hope the above figures will help you in your investigation, but if we can be of further assistance, please let me know.

Very truly yours,

Eliot N. Vestner, Jr.

CONTINENTAL BANK

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO - 231 SOUTH LA SALLE STREET, CHICAGO, ILLINOIS 60693

RAY F. MYERS
EXECUTIVE VICE PRESIDENT,
CORPORATE COUNSEL
AND SECRETARY OF THE
BOARD OF DIRECTORS
312/828-7493

June 2, 1976

RECEIVED

JUN 4 1976

Benjamin S. Rosenthal, M.C.

The Honorable Benjamin S. Rosenthal
House of Representatives
Rayburn House Office Building
Room B-350-A-B
Washington, D. C. 20515

Dear Mr. Rosenthal:

This will acknowledge your letter of May 19, 1976, requesting that Mr. John Perkins appear before your committee on Tuesday, June 8, to testify with respect to boycott activities by certain foreign countries.

We have reviewed your questionnaire very carefully and have communicated our response to your staff counsel, Ronald A. Klempner. We told Mr. Klempner that the bank would respectfully decline to testify on the basis that: (1) the nature of the testimony would appear to involve confidential customer relationships; and (2) we have retrieval problems with records dating as far back as October 1, 1973.

Given the nature of the economies of some of the countries involved in the survey, we are also concerned that submission of requested data relating to them would be tantamount in many instances to identifying customers and disclosing confidential financial information without the protection of formal legal process. This would be a sharp and dangerous detour from the settled course of precedent which recognizes that there is a confidential relationship between a bank and its customers. This relationship has become a basic cornerstone of the banking industry. It is a precept which has been accepted and protected over the years by both legislative bodies and courts. Any inroads on this confidential relationship could well undermine the efficacy of the banking system in this country and should be scrutinized with particular care.

The bank has, of course, complied with the regulations set forth in Export Administration Bulletin 149, effective December 1, 1975 and has filed with the Department of Commerce the reports required by sections 369.2 and 369.3 of the regulations.

The Honorable Benjamin S. Rosenthal
House of Representatives
Washington, D. C. 20515

June 2, 1976

You may be assured that it has always been and continues to be the established policy of the bank to conduct its business operations in accordance with all applicable legal requirements. As applied to the subject matter of your request, this policy requires full compliance with both the Export Administration Act and regulations promulgated thereunder by the U.S. Department of Commerce. Adherence to this policy is closely monitored by management.

Sincerely,

RFM:JBS

CONTINENTAL BANK

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO • 231 SOUTH LA SALLE STREET, CHICAGO, ILLINOIS 60693

June 11, 1976

FRANK E. SHINE
VICE PRESIDENT AND
ASSOCIATE CORPORATE COUNSEL
312/828-6027

The Honorable Benjamin S. Rosenthal
House of Representatives
Rayburn House Office Building
Room B-350-A-B
Washington, D.C. 20515

Dear Mr. Rosenthal:

Reference is made to your letter of May 19, 1976, and our response on June 2, 1976, with respect to certain testimony which you requested. Since our letter of June 2, we have had further discussions with members of your staff and volunteer the following in response to the questions posed.

With respect to question No. 1, exact figures are not available since retrieval and review of all letters of credit since October 1, 1973 would require inspection of each individual file and would present an almost impossible manual task. In addition, information with respect to collections (of drafts) is not available because, as a part of established banking practice, documents are simply passed on for collection without review.

On the basis of our experience, however, and with reference to the type of Trade Practices referred to in Section 369.3 of Export Administration regulations effective December 1, 1975, regarding restrictions which would tend to further a boycott against countries friendly to the United States, and based upon the further assumption that all letters of credit issued by Banks located in Arab League countries contain such boycott clauses, the total letters of credit confirmed or handled between October, 1973 and May, 1976 for the countries in question would approximate 1500 in number with a total dollar amount of $37,182,119.78. Since these figures are based on the assumption that all letters contain such clauses and since all letters in fact do not contain such clauses, the actual totals would be somewhat less. The policy of the bank in connection with handling letters of credit or drafts is to comply strictly with the Export Administration Act and the regulations issued thereunder.

The Honorable Benjamin S. Rosenthal
House of Representatives
Washington, D.C. 20515

June 11, 1976

In response to question No. 2, the bank has no information on which to base an answer and knows of no instances of requests for information with respect to countries or persons of a discriminatory nature and has not, and knows of no bank personnel who have seen a "boycott list".

In response to question No. 3, not only have there been no instances in which a confirmed line of credit has been decreased, but on the contrary business has increased.

According to our records, total Israeli exposure on July 1, 1973 was $3,250,000 as compared with approximately $40,072,000 as of May 28, 1976.

With respect to question No. 4, the response to the first part of the question relative to the bank's policy in responding to information described in question 2 is that none has been formulated since the question is answered in the negative. With respect to seeking guidance on the foregoing matters, subsequent to the receipt of Export Administration Bulletin 149, effective December 1, 1975, the bank through various personnel has discussed handling letters of credit with staff members of the Departments of Commerce and State and has sought their advise with respect to the application of these regulations. In addition, the bank has discussed the interpretations of a letter from the Board of Governors of the Federal Reserve System dated December 12, 1975 with the legal staff of the Board.

Sincerely,

Frank E. Shi

FES:JMc

Statement of

Boris S. Berkovitch
Senior Vice President and Resident Counsel
Morgan Guaranty Trust Company
of New York

Before the
Commerce, Consumer, and Monetary Affairs
Subcommittee
of the
Committee on Government Operations
House of Representatives
Washington, D.C.

Tuesday, June 8, 1976

I am Boris Berkovitch, senior vice president and resident counsel of Morgan Guaranty Trust Company of New York, and the officer directly concerned with internal procedures intended to assure compliance by the bank with the laws and regulations applicable to its business. As requested in Chairman Rosenthal's letter of May 19, 1976, I am appearing to testify on the subject of boycott activities against the State of Israel and related matters.

Turning to the specific inquiries in the letter, I will, with the Chairman's permission, take them up in this order:

Question (2), in which we are asked to cite all instances since October 1, 1973 in which the bank received, from depositors or other clients, requests for information concerning business transacted by the bank in or with the State of Israel, or with persons or firms who are citizens of or do business or are otherwise associated with Israel, or who are of a specified race, religion or national origin, or who are included in a "boycott" list.

Question (4), in which we are asked to state the bank's policy regarding requests for information of the kind described in question (2).

Question (3), in which we are asked whether since July 1, 1973 the bank has decreased by 50% or more any banking facilities or services extended to the State of Israel, or to any firm which is a citizen or resident of Israel or which is included in a "boycott" list.

Question (1), in which we are asked whether since October 1, 1973 the bank has processed letters of credit containing conditions which tend to further a boycott against the State of Israel, or against persons or firms engaged in trade or otherwise associated with Israel, or on the basis of race, religion, sex or national origin, or against persons or firms who appear on a "boycott" list. Information concerning the volume of such letters of credit is also requested.

In addition, we are asked to report what guidance the bank may have sought on any of these matters from the regulatory agencies since October 1, 1973.

It may be appropriate to begin our response to these questions by informing the Subcommittee that the bank neither possesses nor has access to any "boycott" list and is unaware of the identity of persons or firms included in any such list, except as may have been reported from time to time in the press.

Questions (2) and (4)

Based on the recollections of officers, including myself, to whom any such requests would have been referred, Morgan Guaranty has never received from a depositor or other client a request for information of the kind described in question (2).

Our policy in this regard is a simple one. We do not disclose relationships with particular clients to any other client or, for that matter, to any third party except with the consent of the client concerned or pursuant to legal process. Should a request for information of the kind described in question (2) be received by the bank, the request would be rejected.

Question (3)

Morgan Guaranty extends facilities and services to its clients on the basis of their needs and the credit-related criteria integral to the conduct of its commercial banking business. Increases and decreases in facilities extended to or business done with any particular client reflect these considerations and not the factors mentioned in question (3). More specifically, the bank has not reduced business done with any client on the basis of such factors.

Question (1)

The involvement of a U.S. bank in an international letter of credit transaction can be readily described. The U.S. bank confirms or advises to the beneficiary of the letter of credit, normally an exporter, that the letter of credit has been issued by a foreign bank, and that drafts drawn against the credit must be accompanied by documents in conformity with the requirements of the credit. Typically, these would include invoices, shipping documents, and evidence of insurance covering the shipment. Letters of credit issued by banks located in countries adhering to the economic boycott of Israel often require, as further conditions to the payment of drafts drawn thereunder, certain certifications or declarations by beneficiaries. These conditions to payment are typified by requirements such as the following:

1. Declarations that the vessel or aircraft
   (a) is not Israeli-owned,
   (b) does not operate under the Israeli flag, and
   (c) will neither call at Israeli ports nor travel through Israeli waters or airspace;

2. Declarations that the goods shipped are not of Israeli, South African or Rhodesian origin; and

3. Declarations that neither the carrier, exporter, manufacturer or supplier of goods nor any branch, affiliate or subsidiary of such concern is "blacklisted" by authorities in the country of destination.

A bank which has confirmed or advised a letter of credit will pay drafts against the credit only if the drafts are accompanied by documents conforming on their face to the specifications of the credit. The bank does not normally conduct an investigation with respect to or warrant the accuracy of the documents presented to it.

As the Subcommittee is aware, the revised regulations under the Export Administration Act issued by the Department of Commerce which became effective on December 1, 1975 have a bearing on the subject of boycotts.

The regulations prohibit exporters and "related service organizations" (a term which includes banks) from furnishing any information or taking any action which discriminates against U.S. citizens or firms on the basis of race, color, religion, sex or national origin. Morgan Guaranty has complied with the regulations since December 1, 1975 and prior to that date we declined to process letters of credit containing restrictions linked to religion, race or ethnic background.

While the revised regulations do not prevent banks from taking actions which might implement economic sanctions applied by one country against another country friendly to the

United States, the regulations do require any requests for such action to be reported to the Department of Commerce, and Morgan Guaranty has complied with these requirements.

In preparation for this hearing we reviewed our records from December 1, 1975 (the effective date of the revised Department of Commerce regulations) through March 31, 1976. During this four-month period 824 letters of credit in the aggregate amount of $41,237,815 issued by banks in Arab and other Asian and African countries, and containing boycott clauses reportable but not prohibited under the regulations, were processed by Morgan Guaranty.

There were also received during the four-month period 24 letters of credit from banks in these countries, for an aggregate amount of $1,539,717, containing clauses in the category deemed unacceptable under the regulations. Morgan Guaranty did not process these letters of credit unless and until the offending clauses were removed by the issuing banks, which was done in 23 out of these 24 instances.

There were, to the best of my knowledge, only two occasions on which guidance on boycott matters was requested by the bank from the regulatory agencies. In one instance we asked the advice of the Department of Commerce in determining whether a restriction in a letter of credit was acceptable or unacceptable under the regulations. In the other instance the bank, as a member of the New York Clearing House Association, participated in an effort to obtain clarification of a letter from the Federal Reserve Board on the subject of the boycott.

Mr. Chairman, Morgan Guaranty has adhered carefully to the regulations under the Export Administration Act and believes that in their present form they deal adequately with those relatively rare occasions on which religious or racial discrimination is attempted to be introduced into international letter of credit transactions.

As to the broader question whether Congressional action is called for with respect to the economic boycott of Israel, the Administration has enunciated a position which, in our judgment, is consistent with the economic interests and foreign policy objectives of the United States.

In appearances before Congressional committees, State, Treasury and Commerce department officials have urged the Congress to refrain from actions risking injury to the commercial ties between this country and the Middle East involving billions of dollars in export trade and many thousands of jobs. The Administration representatives have pointed out that such actions would carry gravely adverse implications not only for our balance of payments and domestic economy but also for this country's efforts to move the parties to the Arab-Israeli conflict toward a peaceful settlement.

That concludes my statement.

75-877 O - 76 - 11

SECURITY PACIFIC NATIONAL BANK
LOS ANGELES

JERRY W. JOHNSTON
SENIOR VICE PRESIDENT

June 29, 1976

The Honorable Benjamin S. Rosenthal
Chairman
Commerce, Consumer, and Monetary
Affairs Subcommittee of the
Committee on Government Operations
House of Representatives
Rayburn House Office Building
Room B-350-A-B
Washington, D.C. 20515

Dear Chairman Rosenthal:

In response to your letter of June 23, while we were unable to appear as a witness before the Subcommittee, we are herein supplying the data you have requested. In order to furnish the Subcommittee with a more complete response, the information encompasses letter of credit activity for both Security Pacific National Bank (SPNB) as well as our New York based wholly-owned Edge Act subsidiary, Security Pacific International Bank (SPIB).

The data for SPNB covers the period from October 1, 1973 through May 31, 1976; that for SPIB is for the year 1975 through May 31, 1976. Earlier data for SPIB would be burdensome to provide in view of the warehousing of records prior to 1975.

1. During the periods indicated, SPNB and SPIB have handled a total of 471 letters of credit aggregating $30,052,179 which have included clauses described in paragraph (1), (i) - (iii) of your May 19th letter. The foreign nation domiciles of the issuing banks were Kuwait, Saudi Arabia, Bahrain, Lebanon, Egypt, Syria and the United Arab Emirates.

.../...

2. It is the policy of SPNB --and of SPIB-- not to participate in the issuing, advising or confirming of letters of credit the effect of which would discriminate against U.S. citizens or firms on the basis of race, religion, color, national origin or sex. Similarly, it is the policy of SPNB, and SPIB, not to participate in the issuing, advising or confirming of letters of credit the effect of which would discriminate against friendly foreign countries unless and until our proposed involvement has been reviewed and approved on a case-by-case basis to determine if we will comply with such request.

3. To the best of our knowledge there have been no instances since October 1, 1973 in which we have received from or on behalf of a depositor or other source of bank liability located in a foreign country a request for information regarding business which our bank conducts (i) with and in the State of Israel, (ii) with any company or person who does business in or with the State of Israel or is a citizen of the State of Israel, or (iii) with any company or person of any particular designated race, religion, sex, national origin; who is included on a "boycott" list of any foreign country, league or association; or who is otherwise associated in any way with the State of Israel (or because such company or person does business with or employs, is in partnership or joint venture with such a company or person).

4. Since July 1, 1973 our bank has not decreased by 50% or more the amount of any line of business or services conducted within or for (i) the State of Israel, (ii) any company who is a citizen or domicile of the State of Israel or included on a "boycott" list of any foreign country, league or association.

.../...

5. Our policy with regard to fulfilling requests for information described in "3" above would be not to furnish such information.

6. Our bank has sought guidance on the above matters from the Department of Commerce, the Board of Governors of the Federal Reserve System, and legal counsel.

We trust you will find these data and comments responsive to the issues you raised.

Very truly yours,

J. D. Johnston

JWJ:rb

THE FIRST NATIONAL BANK OF CHICAGO

NEIL McKAY / VICE CHAIRMAN OF THE BOARD AND CASHIER

June 2, 1976

Honorable Benjamin S. Rosenthal
Chairman
Commerce, Consumer and
Monetary Affairs Subcommittee
Committee on Government Operations
Rayburn House Office Building
Room B-350-A-B
Washington, D. C. 20515

Dear Chairman Rosenthal:

We are pleased to respond to your letter of May 19, 1976 concerning the proposed hearings by the Commerce, Consumer and Monetary Affairs Subcommittee and to make our Bank's policy a matter of public record with your subcommittee.

In response to your specific questions:

1. In keeping with the applicable law and U. S. Department of Commerce regulations under the Export Administration Act, we oppose restrictive trade practices and have encouraged others to refrain from such practices. More particularly, we have reported to the Department of Commerce since December 1, 1975 any incidents of such practices involving boycott activities by certain foreign countries against the State of Israel which involve letters of credit and any other trade transaction matters which have come within our purview. Indeed, we can also affirmatively state that in connection with trade transactions and letters of credit which involve a boycott of a company or person on the basis of race, religion, sex or national origin (your subparagraph (iii)) or which involve any other prohibited transactions under the Commerce Department regulations, we have rejected and returned such letters of credit--and reported them as well to the Commerce Department--all in strict compliance with the legal requirements pertaining to national banks.

2. We have not been directly subjected to any of the requests for information or demands from foreign countries or foreign entities which may be involved in the boycott of the State of Israel and, to our knowledge, we have never been on any "boycott list." We have, from time to time, since

(Continued)

THE FIRST NATIONAL BANK OF CHICAGO

CONTINUING OUR LETTER OF June 2, 1976

SHEET NO 2

October 1, 1973, received inquiries as to the nature of our business with and in the State of Israel from domestic U. S. members of the Jewish opinion groups, from U. S. church groups and human relations agencies, to whom we have responded with explanations of our Bank's policy of non-discrimination and our abhorrence of boycotts by anyone for any reason. We do not hesitate to continue business relationships with companies or individuals whose names have appeared on published lists and would not hesitate to continue relationships if we were asked to do otherwise.

3. Since July 1, 1973 our Bank's amount of business or services conducted with the State of Israel or citizens or domiciliaries thereof has not decreased, but increased. We do a substantial business in Israel, measured in the millions of dollars. We also do substantial business--principally in credit commitments and of loans advanced under those commitments--with a total of 14 Arab countries, and the amounts involved are also in the millions of dollars for that group of countries.

4. Our Bank's policy is and continues to be as already indicated in our response to question two above. Stated another way, it is our policy to extend credit, locate facilities and seek business relationships based solely on business considerations and our own judgment, subject only to the regulatory authority of host countries where we operate and our own government. As indicated, we scrupulously comply with the Export Administration Act as administered by the Department of Commerce and those requirements imposed upon us by the various federal banking agencies with respect to the activities which are the subject matter of your inquiry.

Sincerely yours,

Neil McKay

Neil McKay
Vice Chairman and Cashier

NMcK:ef

THE FIRST NATIONAL BANK OF CHICAGO

NEIL McKAY / VICE CHAIRMAN OF THE BOARD AND CASHIER

July 6, 1976

Honorable Benjamin S. Rosenthal
Chairman
Commerce, Consumer and Monetary Affairs
Subcommittee
Committee on Government Operations
Room B-350-A-B
Rayburn House Office Building
Washington, D. C. 20515

Dear Chairman Rosenthal:

We are pleased to provide you with the information requested in your letter of June 23, 1976. You will recall that we responded to the Subcommittee's letter request of May 19, 1976 in our letter of June 2, 1976, and that your present inquiry releates to the statistical data requested in Question 1 of your May 19 request.

The data furnished in the next paragraph reflect information on hand here in the Bank covering the period January 1, 1976 through June 28, 1976. (In order to comply promptly with your request, and as you indicated would be appropriate in your June 23 letter, we have not gone back to the October 1, 1973 date, since accurate record reconstruction from that period would be unduly time-consuming and costly.) Incidentally, figures of our three Edge Act banking corporations--First Chicago International Banking Corporation, New York; First Chicago International Los Angeles; and First Chicago International San Francisco--are included in these totals.

Since January 1, 1976, we have advised 219 letters of credit which contained Israeli-related boycott language or requests which are reportable to the Commerce Department under the Export Administration Act regulations. All of these were reported by the Bank. These credits amounted to an aggregate dollar figure of $16,793,515 and involved the following countries: Iraq, Kuwait, Dubai (U.A.E.), Abu Dhabi (U.A.E.), Jordan, Lebanon, Saudi Arabia, Bahrain, Qatar, West Germany, Italy and the United Kingdom. We have also received five letters of credit totalling $262,637 with requests that are prohibited under the Commerce Department regulations, and in each instance these

(Continued)

THE FIRST NATIONAL BANK OF CHICAGO

CONTINUING OUR LETTER OF July 6, 1976

SHEET NO TWO

credits were returned to the opening banks and reported to the Commerce Department. Four of these credits originated from Saudi Arabia and one from the United Kingdom.

The First National Bank of Chicago policy covering the area under study by your Subcommittee was, we believe, adequately spelled out in our June 2 letter, and we acknowledge your appreciation of our earlier response to Questions 2, 3 and 4 of your May 19 letter.

Sincerely yours,

Neil McKay

Neil McKay
Vice Chairman of the Board
of Directors and Cashier

NMcK:ef

First Pennsylvania Bank

RECEIVED

9

Benjamin S. Rosenthal, M.C.

J Bartow McCall
Executive Vice President

June 3, 1976

The Honorable Benjamin S. Rosenthal, Chairman
Commerce, Consumer and Monetary Affairs Subcommittee
of the Committee on Government Operations
Rayburn House Office Building, Room B350 A-B
Washington, DC 20515

Dear Sir

Thank you for your letter of May 19th addressed to First Pennsylvania Bank President James F. Bodine concerning the practices of our bank as they relate to boycott activities against the State of Israel.

You should understand that First Pennsylvania Corporation has a substantial investment in Israel which is interest in FIBI Holding Company Limited (the First International Bank of Israel Ltd.). FIBI is also partly owned by the State of Israel. Since our original investment in 1972, we have enjoyed excellent relations with the State of Israel and its business community. During that time, we have increased our investment several times with the most recent increase being made in November, 1975.

Turning now to the questions in your letter.

Since October 1, 1973, we have handled seven Letters of Credit totaling $720,741 involving Lebanon, Egypt, France, Bahrain and Kuwait. Two of these Letters were returned to the issuing bank and not forwarded to the beneficiaries by our bank. It is our policy to seek legal counsel on any Letters of Credit which may appear to contain unlawful restrictions and return such Letters to the issuing bank where appropriate.

We provide certain credit information on bank customers to other financial institutions which are known to us to be legitimate seekers of such information. This disclosure is carefully monitored and limited in accord with the Code of Ethics of the Robert Morris Association.

Without more time to inventory each file it is impossible to itemize every single instance.

We have not decreased by 50% any line of business.

I hope this information is helpful.

Sincerely

JBM:baf

European-American
Bank & Trust Company

RECEIVED

June 2, 1976

KLAUS JACOBS
President

The Honorable Benjamin S. Rosenthal
Chairman
Commerce, Consumer and Monetary Affairs
Subcommittee of the Committee on
Government Operations
Congress of the United States
House of Representatives
Room B-350-A-B
Washington, D.C. 20515

Benjamin S. Rosenthal, M.C.

Dear Mr. Rosenthal:

In response to your letter dated May 19, 1976:

Enclosed you will find a table summarizing certain letters of credit, some of which resulted in bankers' acceptance financing, which our bank has issued or confirmed since October 1, 1973 to this date. These letters of credit are of the sort to which the Export Administration Regulations are directed. At the start of the period referred to it was our policy to honor customer requests to issue letters of credit containing conditions that were precisely enough expressed to be susceptible of administration and were in keeping with the commercial climate then obtaining. Since then our policy has become more restrictive, in order to respond to the Export Administration Regulations, as made applicable by the Board of Governors of the Federal Reserve System, and, more recently, the Lisa Law of the State of New York.

Secondly, after discussion with those officers considered most likely to receive (or be aware of) inquiries of the sort referred to in your second question, we advise you that we have never received requests that appear directed to obtaining such information.

Thirdly, since July 1, 1973 our bank has not reduced any business or services within or for the State of Israel or any company a citizen of or domiciled in that state or any company identified to us as being on a "boycott" list of any foreign country, league or association. Fourthly, our bank has no policy with respect to requests for information described in your second question; since no requests have been received the occasion to formulate a policy has not arisen.

Very truly yours,

Klaus Jacobs

LETTERS OF CREDIT OPENED BY BANKS IN THE ARAB COUNTRIES

	1973		1974		1975		1976	
	# of L/C	Amount	# of L/C	Amount	# of L/C	Amount	# of L/C	Amount
Egypt	22	588,084.-	19	2,210,574.-	53	15,418,320.-	23	6,219,046.-
Saudi Arabia	27	751,906.-	230	12,316,862.-	144	12,821,203.-	0	-0-
Lebanon	58	1,279,861.-	151	10,383,131.-	27	522,393.-	7	361,158.-
Syria	0	-0-	1	1,171.-	0	-0-	5	3,345,852.-
Dubai	0	-0-	35	246,099.-	85	584,295.-	27	149,201.-
Libya	11	230,533.-	74	3,194,862.-	55	3,793,863.-	0	-0-
Sharjah	0	-0-	0	-0-	6	487,359.-	17	730,422.-
Iraq	0	-0-	0	-0-	1	15,587,555.-	0	-0-
Belgium	0	-0-	0	-0-	0	-0-	4	1,161,975.-

83 $11.9 MILLION

Letters of Credit returned to Opening Banks under Lisa Law in 1976	# of L/C	Amount
Egypt	2	137,070.-
Saudi Arabia	15	9,534,144.-
Libya	3	651,847.-

WELLS FARGO BANK
NATIONAL ASSOCIATION

RALPH J. CRAWFORD, JR.
Vice Chairman

June 4, 1976

The Honorable Benjamin S. Rosenthal, Chairman
Commerce, Consumer and Monetary Affairs Subcommittee
of the Committee on Government Operations
Rayburn House Office Building
Room B-350-A-B
Washington, D. C. 20515

Dear Mr. Rosenthal:

Your letter of May 19 touches on matters of importance to our management and to which we have given continuing serious thought. We are pleased, therefore, to be able to give you our views. We have the following comments on your questions given in the same order as they appeared in your letter.

1. To provide you with the extensive compilation of information requested would be impossible. Our records would not provide the information you seek. Nevertheless, we recognize fully the legitimacy of your question, which, as we interpret it, is aimed at understanding the policy of U.S. commercial banks in this matter. Wells Fargo Bank adheres firmly to principles of non-discrimination in matters of race, religion, sex, or national origin.

   Support of these principals pervades all our policies and actions in every sphere of our business and administrative activities.

   Thus this concept has been our fundamental guideline in considering how to handle letters of credit or other requests from foreign banks containing restrictive clauses. That is, we are not processing letters of credit alluding to the matters mentioned in your first question where there is an intent to discriminate on the basis of race, religion, sex or ethnic origin.

2. Again, we do not have records going back to October 1, 1973, in a form from which we would extract the information you desire. However, none of the individuals in Wells Fargo Bank familiar with Middle East accounts can ever recall receiving any inquiries of the type you describe.

3. There has been in the past few months a small increase in the amount of our routine banking business done with Israeli institutions.

4. An answer to this question would not appear necessary in light of our reply to question (2) above.

We hope very much you will find this information helpful in pursuit of your investigation.

Sincerely yours,

WELLS FARGO BANK
NATIONAL ASSOCIATION

RONALD E. EADIE
Executive Vice President

July 6, 1976

The Honorable Benjamin S. Rosenthal
Chairman
Commerce, Consumer and Monetary Affairs
Sub-Committee of the Committee on
Government Operations
Rayburn House Office Building
Room B-350-A-B
Washington, D. C. 20515

Dear Mr. Rosenthal:

In response to the request for information contained in your letter of June 23, we are pleased to supply you with the following:

Since January 1, 1976, Wells Fargo Bank has handled 184 letters of credit totalling $27,722,307 face amount which contained in some form reference to the enforcement of provisions of the Arab economic boycott of Israel.

In no case have we processed any letter of credit which stated that the requirement for certification was related to some religious or ethnic qualification nor have we received any of these. We have, however, refused to process five letters of credit totalling $1,427,675 which we felt contained language that might possibly imply a restriction which was discriminatory in nature. This cautious approach is consistent with policy described to you in our previous letter, i.e. we will not process letters of credit whose language might be interpreted as discriminatory on the basis of race, religion, sex or ethnic origin.

Trusting this information will meet your requirements,

Sincerely,

R E Eadie

First National Bank of Minneapolis
120 South Sixth Street, PO Box A512
Minneapolis, MN 55480

D. H. Ankeny, Jr.
President

June 4, 1976

Mr. Ronald Klempner
Department of Commerce
Room 350B Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Klempner:

This letter responds to your phone call of yesterday in which you suggested that we give consideration to testifying before the Commerce, Consumer and Monetary Affairs Subcommittee.

Our concern stems from the fact that we were named among 25 major commercial banks and more than 200 U. S. corporations which, through acceptance of questioned bank letters of credit, were in effect contributing to economic war against another nation. We announced that we had been processing these bank letters of credit only as permitted under present U. S. Department of Commerce regulations. In our opinion, these regulations are ambiguous and subject to widely varying interpretations. We thus are hoping that new and more explicit regulations or specific provisions will be added to the law which will spell out in precise and definite terms the course of action to be followed by U. S. banks so as to insure equitable treatment to all nations with which the United States trades.

This letter is intended to serve in lieu of verbal testimony before the Commerce, Consumer and Monetary Affairs Subcommittee.

As promised on the phone, I am attaching a copy of a letter which has been sent to some of our Congressmen.

Sincerely,

D H Ankeny Jr.

President

May 24, 1976

Honorable James L. Oberstar
323 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Oberstar:

Your legislative assistance is respectfully and urgently requested, by the First National Bank of Minneapolis, toward correcting a problem in processing certain Arab bank letters of credit which have been interpreted to be in support of economic boycott against Israel. The unfortunate situation developed through that interpretation clearly emphasizes the need for new Federal statutes and regulations more precise and explicit than those now in existence.

On March 11 the Anti-Defamation League of B'nai B'rith named First Minneapolis as among 25 major commercial banks and more than 200 U.S. corporations which, through acceptance of questioned Arab bank letters of credit, were in effect contributing to economic war against Israel in collaboration with the Arabs. We announced that we had been processing the Arab bank letters of credit only as permitted under present U.S. Department of Commerce regulations and routinely reporting these transactions as specified by the regulations. However, in our opinion, the regulations are ambiguous and subject to widely varying interpretations.

We are hopeful that necessary and more explicit regulations will be enacted which will spell out in precise and definite terms the course of action to be followed by U.S. banks in this situation.

It is our understanding that the Export Administration Act comes up for renewal this year, and we urgently recommend that it be strengthened with definite sanctions prohibiting participation in a boycott against any nation friendly to the U.S.

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In addition, we urge your support of the Stevenson-Williams Bill which would prohibit U. S. companies from refusing to do business with other American companies on the Arab boycott list, and would strengthen the compliance and public disclosure requirements in all such transactions. There is a definite need for new regulations which will clearly prohibit the use of any restrictive boycott certifications.

We have discussed this situation with a number of leaders of the Twin Cities Jewish community who recognize our problem and are in agreement with our belief that new and more definite regulations are needed.

We solicit your help not only in our own interest but also on behalf of the individuals and business firms of the Upper Midwest we are privileged to serve.

Sincerely,

Roland H. Thuleen
Vice Chairman of the Board

bcc: D.H. Ankeny, Jr.

FAEGRE & BENSON

1300 NORTHWESTERN BANK BUILDING

MINNEAPOLIS, MINNESOTA 55402

612/338-7571

June 3, 1976

Mr. Ronald Klempner
Commerce Consumer and
Monetary Affairs Subcommittee
Room B
350 Rayburn House Building
Washington, D. C. 20515

Dear Mr. Klempner:

In accordance with our telephone conversation of today, I am enclosing copies of letters of Mr. Philip B. Harris, Chairman of the Board of Northwestern National Bank of Minneapolis to Senator Walter F. Mondale and to Congressman Bill Frenzel regarding the Northwestern National Bank's policy on restrictive trade practices.

In addition to these letters, I am also enclosing a copy of the Bank's policy statement which was ratified and approved by the Bank's Board of Directors on April 15, 1976.

If we can be of any further assistance in connection with this matter, please advise.

Very truly yours,

FAEGRE & BENSON

James A. Halls

JAH/jo

Enc.

NORTHWESTERN NATIONAL BANK
[illegible]
[illegible]

Philip B. Harris
[illegible]

May 5, 1976

The Honorable Walter F. Mondale
443 Russell Senate Office Building
Washington, D. C. 20510

Dear Fritz:

Northwestern National Bank of Minneapolis is subject to the Export Administration Regulations (15 CRF, Part 369) as amended December 1, 1975, relating to restrictive trade practices or boycotts.

As you may know, the regulations prohibit certain restrictive trade practices that discriminate against U. S. citizens or firms on the basis of race, color, religion, sex or national origin, but do not prohibit certain other types of actions that have the effect of furthering or supporting other restrictive trade practices or boycotts. In the latter type of case, exporters and related service organizations engaged or involved in the export from the United States of commodities, services, or information, are encouraged and requested by the Commerce Department to refuse to take any action, including the furnishing of information or the signing of agreements, that has the effect of furthering or supporting other restrictive trade practices or boycotts fostered or imposed by foreign countries against certain other countries. While the Commerce Department encourages exporters and related service organizations to refuse to engage in such practices, doing so is not prohibited but is merely a reportable transaction.

Northwestern National Bank has refused to engage in transactions, including permissive-reportable transactions, that would have the effect of furthering or supporting restrictive trade practices or boycotts. A copy of our Statement of Policy

NORTHWESTERN NATIONAL BANK
Seventh & Marquette
Minneapolis, Minnesota

Earl R. Harris
Manager - Public Affairs

May 3, 1976

The Honorable Bill Frenzel
1026 Longworth Office Building
Washington, D. C. 20515

Dear Bill:

Northwestern National Bank of Minneapolis is subject to the Export Administration Regulations (15 CRF, Part 369) as amended December 1, 1975, relating to restrictive trade practices or boycotts.

As you may know, the regulations prohibit certain restrictive trade practices that discriminate against U.S. citizens or firms on the basis of race, color, religion, sex or national origin, but do not prohibit certain other types of actions that have the effect of furthering or supporting other restrictive trade practices or boycotts. In the latter type of case, exporters and related service organizations engaged or involved in the export from the United States of commodities, services, or information, are encouraged and requested by the Commerce Department to refuse to take any action, including the furnishing of information or the signing of agreements, that has the effect of furthering or supporting other restrictive trade practices or boycotts fostered or imposed by foreign countries against certain other countries. While the Commerce Department encourages exporters and related service organizations to refuse to engage in such practices, doing so is not prohibited but is merely a reportable transaction.

Northwestern National Bank has adopted a policy of refusing to engage in any transaction, including permissive-reportable transactions, that would have the effect of furthering or supporting restrictive trade practices or boycotts. A copy of our Statement of Policy which was ratified and approved by our Board of Directors on April 15, 1976, is enclosed.

We believe that we are one of the few banking institutions in this area that has adopted such a broad policy and believe

that many of our competitors continue to engage in permissive-reportable transactions notwithstanding the request by the Commerce Department that they refrain from taking any such action that would have the effect of furthering or supporting restrictive trade practices.

Because of our policy of compliance with the request of the Commerce Department, we believe that we are at a competitive disadvantage with some of the other banking institutions in this area and we urge the adoption of pending legislation in Congress which would reduce or eliminate the permissive type of certifications that are presently permitted under the Department of Commerce regulations. The adoption of such legislation would put all financial institutions on an equal footing insofar as dealing with customers involved in export transactions.

If we can be of any assistance in providing you with additional information in connection with the proposed legislation, we shall be happy to do so.

Sincerely,

POLICY OF
NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS
REGARDING RESTRICTIVE TRADE PRACTICES OR BOYCOTTS

Northwestern National Bank of Minneapolis will be governed by the following policies regarding restrictive trade practices or boycotts pertaining to export transactions involving the Bank's facilities:

1. The Bank will comply with the Commerce Department's Export Administration Regulations (15 CFR, Part 369) as amended December 1, 1975, relating to restrictive trade practices or boycotts.

2. As a general rule, the Bank becomes involved in export transactions only through its International Department. Personnel in the International Department are familiar with the provisions of 15 CFR, Part 369 and will comply with the regulations.

3. Letters of credit, acceptances, and other agreements or documents forwarded to the Bank in connection with any export transaction will be scrutinized to determine whether they contain any provisions that would have the effect of furthering or supporting a restrictive trade practice which discriminates against U. S. citizens or firms on the basis of race, color, religion, sex or national origin. In the event the documents contain such

discriminatory provisions, the same will be returned to the forwarding party with instructions to amend or modify the documents so as to be in compliance with 15 CFR, Part 369. If the forwarding party refuses to amend or modify the documents as requested, the Bank will refrain from further participation in the transaction.

4. In cases of doubt as to whether the documents contain provisions prohibited by 15 CFR, Part 369, the matter shall be referred to the Bank's counsel.

5. These policies shall be effective as of this 19th day of March, 1976.

Philip B. Harris
Chairman of the Board of Directors

Centre Square
400 Market Street, Philadelphia, Pennsylvania 19102

JOHN T. WAGNER
Vice Chairman of the Board

June 7, 1976

Department of Commerce
Consumer and Monetary Sub-Committee
Room B-350
Rayburn House Office Building
Washington, D.C. 20515

Attention: Ronald Klempner

Dear Mr. Klempner:

On March 11 the press reported the Anti-Defamation League's charge that Continental Bank, along with two other local banks, was "waging economic war against Israel in collaberation with the Arabs" and that we were acting as "agents of the Arabs." Specifically, the charge referred to Continental Bank acting as collecting agent for customers who were issued letters of credit which required documentation to the effect that goods were "shipped to Arab countries on vessels which would not stop at any Israeli port."

As Divisional Head of our Public Relations Department, I responded to the charge that the management of this bank was not aware of the acceptance of such documents and immediately adopted a policy of refusing to accept any and all letters of credit which contain conditions of Israeli Boycott.

Examination of our records at that time indicated that during the first two months of 1976 we had processed approximately 10 such letters and during 1975 there were approximately 4.

For your information I am enclosing my letter to Mr. Samuel Gaber, Regional Director of the Anti-Defamation League in Philadelphia dated March 15 and a copy of his reply to me dated April 2. In addition, I am enclosing a copy of a letter written by Mr. James J. Morris, Vice Chairman of the Board, who is Divisional Head of our International Department, which is addressed to the Jewish Exponent.

CONTINENTAL BANK

Department of Commerce
Attention: Ronald Klempner
Page - 2 -
June 7, 1976

I am also enclosing a copy of Mr. Morris' policy statement concerning Restrictive Trade Practices by this Bank.

I trust these documents and statement will be helpful to you.

Sincerely,

John T. Wagner

JTW/djb

enclosures

Centre Square
o Market Street, Philadelphia, Pennsylvania 19102

CONTINENTAL BANK

JOHN T. WAGNER
Vice Chairman of the Board

March 15, 1976

Anti-Defamation League
225 S. 15th Street
Philadelphia, PA 19102

Attention: Samuel Lewis Gaber,
Regional Director

Dear Mr. Gaber:

To clarify our conversation of today, please be advised that we have looked into the charge of the ADL that the Continental Bank was acting as collecting agent for customers who were issued letters of credit which required documentation to the effect that goods were "shipped to Arab countries on vessels which would not stop at any Israeli port".

The management of this bank was not aware of the acceptance of such documents and effective immediately, has adopted a policy of refusing to accept any and all letters of credit which contain conditions of Israeli Boycott.

I trust that this explanation of our position is adequate.

Very truly yours,

John T. Wagner

JTW/djb

TO BE HAND DELIVERED

PENNSYLVANIA-WEST VIRGINIA-DELAWARE REGIONAL OFFICE

ANTI-DEFAMATION LEAGUE

Of B'nai B'rith

225 S. 15th STREET, PHILADELPHIA, PA. 19102 • (215) PE 5-4267

April 2, 1976

Mr. John T. Wagner
Vice Chairman of the Board
Continental Bank
Centre Square
Philadelphia, PA 19102

Dear Mr. Wagner:

On behalf of the Anti-Defamation League of B'nai B'rith I am responding to your letter of March 15th which confirmed our conversation on that day.

We are gratified to learn that the Continental Bank has looked into the Anti-Defamation League charge that the Bank "was acting as collecting agent for customers who were issued letters of credit which required documentation to the effect that goods were 'shipped to Arab countries on vessels which would not stop at any Israeli port.'" And further, that the management of the Continental Bank "was not aware of the acceptance of such documents and effective immediately, has adopted a policy of refusing to accept any and all letters of credit which contain conditions of Israeli Boycott."

On the basis of the above, we are pleased to tell you that the Anti-Defamation League will advise anyone who asks that the Continental Bank should no longer be included on any list of companies submitting to the Arab boycott. Please feel free, as I have indicated to you, to refer any inquiry to us in this matter.

Very truly yours,

Samuel Lewis Gaber

Samuel Lewis Gaber, ACSW
Regional Director

SLG:trb

Delivered by hand

Centre Square
9 Market Street, Philadelphia, Pennsylvania 19101

JAMES J. MORRIS
Vice Chairman of the Board

March 15, 1976

Mr. Frank Wundohl
Editor
JEWISH EXPONENT
226 South 16th Street
Philadelphia, Pennsylvania

Dear Mr. Wundohl:

We write to you in reference to the reports which appeared in the Philadelphia and New York newspapers last week concerning statements made by the Anti-Defamation League of B'nai B'rith that Continental Bank directly or indirectly assisted in the Arab countries' economic war against Israel.

We did, in fact, handle, as agent, certain export letters of credit for our customers which contained as a part of the documentation a statement that the goods were "shipped on vessels which did not stop at any Israeli ports." Senior Bank Management was not aware of the acceptance of such documents, by members of our staff, and effective immediately, we have instructed our personnel to refuse to accept such letters.

We have received calls from some of our Jewish clientele in reaction to the articles. We want to point out to them and to all interested parties that we have consistently been a strong supporter of the Jewish community. We have demonstrated this through substantial holdings of Israel Bonds, through important financial commitments to permit the construction of synagogues and allied projects, and through generous contributions to the Allied Jewish Appeal and other Jewish-sponsored charities and causes. We hope that we will be measured by our supportive performance over many years, and not by isolated transactions, which occurred without the knowledge or approval of the Senior Management of Continental Bank.

Very truly yours,

CONTINENTAL BANK

James J. Morris

James J. Morris

TO: Anthony A. Alber, Vice President

FROM: James J. Morris, Vice Chairman

DATE: March 12, 1976

SUBJECT: Restrictive Trade Practices or Boycotts

Effective immediately, it is the policy of this bank not to accept, negotiate, or, otherwise, process letters of credit or any other documents or advices which contain information or agreements having the effect of furthering or supporting a restrictive trade practice that discriminates against United States citizens or firms on the basis of race, color, religion, sex, or national origin. This policy also extends to restrictive trade practices or boycotts fostered by foreign countries against other countries friendly to the United States.

Please make sure that this policy is communicated clearly to any personnel in our bank who are involved with exporting or importing transactions.

James J. Morris

/ln

cc: Roy Peraino, Chairman
Russell Fitzgerald, President
Jack Wagner, Vice Chairman
Richard Rishel, Exec. Vice Presdient
Carlo Bosi, Sr. Vice President